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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

The People of the State of Illinois on the relation of ROBERT H. ENGLE,

Appellants,

VS.

OTTO KERNER and the other Members of the Illinois State Electoral Board,

Appellees.

An Appeal from the Supreme Court of the State of Illinois

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

The Appellants, The People of the State of Illinois on the relation of Robert H. Engle, Plaintiffs-Appellants in the Court below, submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that the questions presented by the appeal are substantial and are of public importance.

OPINIONS BELOW

The Supreme Court of Illinois denied the Motion for leave to file a Petition for a Writ of Mandamus and a Declaratory Judgment under the original jurisdiction of said Court, without comment, on 3 April 1964.

The Decree of the Sangamon County Circuit Court of 18 June 1964 is in Appendix A.

The Opinion of the Illinois Supreme Court, filed 4 February 1965, the Dissent Opinion filed 18 March 1965, and the Opinion and Provisional Reapportionment of Senate Districts, 9 September 1965, are in Appendix C, F, and I.

The Confirmation Judgment of the Three-Judge United States District Court of Northern Illinois Eastern Division [illegible] October 1965 is in Appendix K.

[illegible]ois Supreme Court has retained jurisdiction for [illegible]ion of the Illinois General Assembly, and [illegible] Census figures are available for legislative action.

T[illegible] Opinions issued on Motions or Suggestions [illegible]ers denied without comment except the Motion [illegible] 21 [illegible]ne 1965, which was denied "without prejudice".

Jurisdiction of the Illinois Supreme Court is still retained by that Court.

PROCEEDINGS AND RULINGS IN THE COURTS BELOW

This cause began (Record No. 38490) by invoking the original jurisdiction of the Supreme Court of Illinois for a Writ of Mandamus and a Declaratory Judgment. The Writ of Mandamus was to require the State Electoral

Board (which administers the laws for the election of State officers), to accept the Relator's candidacy for Representative in the General Assembly from the Fifth Senatorial District as it existed before the 1954 proclaimed amendment to Article IV of the Illinois State Constitution. The requested judgment would have declared the said proclaimed amendment invalid for the omission of the specifications of the Senate Districts that could not be changed except by another amendment to the State Constitution, thus evading the Illinois State Constitution's mandate that proposed amendments must have been stated "in full" on the journals of each house, and published "in full" to the electors at least three months before they voted to adopt it. Another invalidity charged (Complaint R. 5, ¶ 10-3) was Senate Districts whose chief objective and lay out violated the Equal Protection Clause of our United States Constitution.

When, (R. 31) after denying original jurisdiction, the Illinois Supreme Court received this cause in review from the Sangamon County Circuit Court, (R. 24, 25) the candidacy of the Relator had become moot. But still at issue were the complained-of invalidities of the said purported amendment and the Mandate on the State Electoral Board to conform to the judgment to be declared.

The Illinois Supreme Court, in its opinion of 4 February 1965, (2d 32 Ill. 212), (R. pp. 50-64) failed to rule on either of the invalidities brought to it for review (See the Dissent of Justices Schaefer and Hershey; 2/18/65 (R. 60-64)) but accepted (Opinion R. 53) the 15 June 1964 order of our United States Supreme Court in *Reynolds* v. *Sims*, 377 US 533, remanding *Germano* v. *Sims* 63-C-291 to the Three Judge District Court for consonant rulings, and later, assigning priority in this duty to the State Court (*Scott* Appeal, decided 6/1/65, No. 1152 *per Curiam.*)

The *Reynolds* v. *Sims* and the *Germano* v. *Kerner* judgments held invalid the permanent "area" plan of representation used for the Senate whereby Cook County with more than half of the State's population since 1950 was apportioned 24 Senators (18 of them in Chicago) and 34, a majority of 10, to the rest of the State. The Illinois Supreme Court, the highest in the State for such a decision, held the remaining parts of the 1954 proclaimed amendment separable and valid (R. 56-57) and retained jurisdiction to insure valid elections in 1966, and later, "until the 1970 census figures are available for legislative action" (Opinion 2/4/ and 9/9/1965, R. 60, 65-66, 232).

On 18 March 1965, Relator's petition for a Rehearing was denied and the dissent of Justices Schaefer and Hershey was announced and filed.

The People . . . —Appellants, by Motions and Suggestions, then drew into question the validity of some of the remaining saved features of Article IV under our United States Constitution as follows: in summary,

1. Are unnecessary delays in reapportionments permissible under the Equal Protection Clause of our United States Constitution?
2. Are elections of members of the General Assembly by the State at large in Illinois, permitted under Section 1 of Amendment XIV, United States Constitution?
3. Under the Equal Protection Clause, is the equality of Legislators superior to the equality of Electors?
4. Is the denial of Elector equality in favor of Legislator equality in the 9/9/65 Opinion and Provisional Reapportionment of Senate Districts, permitted by the Equal Protection Clause of our United States Constitution?

1. The Motion of 3/22/65, (R. 71) asked that the postponement of the decennial reapportionments from the First to the Second General Assembly after the U.S. Census be held to make the first and fifth biennia of every reapportionment, 40 per cent thereof, in violation of the Equal Protection Clause of our United States Constitution. This was denied sans comment 5/19/65 (R. 85).

2. The People . . . —Appellants in their Suggestions of 9/15/65, (R. 127-128) and their Motion of 8/24/65, (R. 227 and 280-281), drew into question the validity of elections by the State at large of 177 Representatives in the General Assembly. Experience has shown its practicable impossibility. Choosing 177 Representatives from 236 candidates proved to be impossible both for candidates canvassing the whole State and electors making 177 selections and marking a complete ballot in the time permitted. This abridged the Republican Form of Government and denied electors their right as United States citizens to a complete and equal ballot, protected by Amendment XIV-1. This would be true of any State the size of Illinois.

3. The People . . . —Appellants, on 14 May 1965, (R. 73-80) and on 19 June 1965 (R. 107-109), and on 15 July 1965 (R. 124-125) drew into question the validity of the saved features of the Article IV proclaimed amendment, for failing to provide for representation in the Illinois General Assembly that would meet the requirements of the Equal Protection Clause of our United States Constitution. Whom does this Constitution require to be equal, Legislators, or Electors?

The "One Legislator, one vote" rule subjects the Electors in Illinois districts, as it does in other States, to weighting by the ratio of the Average to the Actual number of district electors, but in addition for Illinois, the

three choices given the electors are all elected regardless (after the first vote) of how or whether any other elector votes. For this most important office, electors' votes are reduced to a meaninglessness amounting to disenfranchisement. This happens in usually about half the districts. In the other districts electors are compelled to accept 3 out of 4 candidates which is almost as bad.

If, on the other hand, to this Illinois System were added the "One Elector, one vote" rule, by which each Representative would vote his own election returns when voting on the legislative decisions of the whole House, automatic and almost perfect equality of representation would be achieved at every election, with a meaningfulness and vitality unequaled. Each district would be interested in getting out the maximum eligible vote. In these circumstances, which rule, equality of Legislators, or of Electors, does the Equal Protection Clause of our United States Constitution require?

This is explained in the Appellants' Motions (R. 73-77, 107-118, 124-133, 204-222, and 227 with argument thereon at 256-262). The Court denied these Motions without comment, except that the one filed 21 June at pages R. 107-118, was denied "without prejudice", 24 June 1965 (R. 121).

4. The People . . . —Appellants repeatedly (R. 73-77, 94-95, 107-118, 124-133, 204-222, 227, 256-262) drew into question the validity, under the Equal Protection Clause of our United States Constitution, of pseudo equalizations of representation by reapportionments alone,—especially for Illinois with nearly a century of experience with District Minority Representation, and since 1910, with forcing political party Committeemen to vote their own electors, and likewise, in 1964, Delegates in the State-at-large Representatives Nominating Convention.

This, The People . . .—Appellants' plea that "Reapportionments alone are not enough", the Illinois Supreme Court denied in its Opinion and Provisional Reapportionment of Senate Districts of 9/9/65 (R. 230-253). Its apportionment was based on early 1960 Census data *only* which, even with zero deviations, is manifestly not equality for 1966 or 1970 elections. The Illinois Supreme Court had the alternative of choosing the standard of 1) "One Elector, one vote", or 2) "One Legislator, one vote" (if indeed the Equal Protection Clause permits this second alternative). The Court chose to deny the Elector equality and chose to uphold Legislator equality instead. It chose to deny Elector equality by weighting Legislators' votes (this would have been new and not yet passed on by the United States Supreme Court) and decided in favor of the traditional unequal weighting of Electors' votes in order, that Legislators may vote equally. This, the Appellants hold, is in violation of the Equal Protection Clause of Amendment XIV-1.

The Court's excuse was to quote from "the Scriptures" itself, "Mathematical nicety is not a constitutional requisite", *Reynolds* v. *Sims*, 377 US 533, at IV par. 1; R. 232. Perhaps, at present, this may be an acceptable excuse in other states, but not in Illinois.

A succinct summary of these "Questions Presented" is:

1. Are unnecessary delays in reapportionments permissible under the Equal Protection Clause?
2. Are elections of members of the Illinois General Assembly by the State at large permitted by Section 1 of Amendment XIV?
3. Is the equality of Legislators superior to the equality of Electors?

4. Is the denial of Elector equality in favor of Legislator equality in the 9/9/65 Opinion and apportionment of Senate Districts, permitted by the Equal Protection Clause of Amendment XIV?

GROUNDS FOR THE JURISDICTION OF THE UNITED STATES SUPREME COURT

This is an appeal under the provisions of 28 U.S.C. 344; or 28 U.S.C.A. 1257 (2). It is an appeal from the final judgments of the Illinois Supreme Court, the highest court from which decisions in Illinois may be had. Each question is one where there has been drawn in question the validity of a state law under our United States Constitution, and the highest Court of the State has upheld its validity.

THE CASES believed to sustain the jurisdiction of the Supreme Court of the United States are *Baker* v. *Carr*, 369 US 186 and the many cases following in its train including the group of cases decided with *Reynolds* v. *Sims*, 377 US 533.

THE TEXTS of the questioned law and all parts of the Illinois Constitution referred to are reproduced where referred to, or in the Record, or in an Appendix.

THE QUESTIONS PRESENTED

The questions presented by this appeal are current problems not previously before The Supreme Court of the United States. They are of great importance and substantiality to Illinois and to other States with similar needs of greater vitality and representativeness in their State Legislatures. They are as follows:

1. Does that part of the 1954 proclaimed amendment to Article IV of the Illinois State Constitution, which postpones the decennial reapportionments of the state legislators' districts from the first to the second General Assembly after the decennial United States Census of Population, contravene the Equal Protection Clause of our United States Constitution for the first and fifth biennia of each reapportionment, 40 percent thereof?

2. Are not elections by the State at large, in States as large as Illinois, of 177 Representatives from 236 or more candidates, such an impossible task for both candidates in canvassing the State, and for electors in selecting 177 choices and marking a complete ballot in the time permitted, as to be an unrealistic and invalid compliance with the Equal Protection Clause of our United States Constitution?

3. Do the Republican Form of Government and the Equal Protection Clauses of our United States Constitution require a re-equalization agency, in this case the Illinois Supreme Court, to achieve, and to provide for maintaining, representation as nearly equal as practicable? Even though it must establish District Minority Representation for the Senate and replace the "One Legislator, one vote" rule, by the same "One Elector, one vote" rule which Illinois since 1910 has forced upon its political party Committeemen, and in 1964 ordered for its State-at-large Representatives Nominating Convention? Or, is Illinois precluded from doing this by the dictum, "Mathematical nicety is not a constitutional requisite?"

4. Do these said parts of our national Constitution, together with the enacting clause of the Illinois State Constitution, "Be it enacted by the PEOPLE of the State of Illinois represented in the General Assembly" require that

legislative decisions be by members of the House of Representatives elected by majorities of the total number of the State's electors who voted for the members elected?

THE STATEMENT OF THE CASE

In 1953 the 51 Illinois legislative districts each of which elected one Senator and three Representatives, had not been reapportioned since 1901—ostensibly to prevent control of the General Assembly passing to Cook County. However, 9 of the most over-represented districts were in Chicago while 5 of the most under-represented districts were outside of Chicago (chart in Plaintiffs' brief, p. 33 at Record p. 31). The bias of a majority not voting against itself is understandable.

In 1953, the Relator in the present Cause, repeated his suggestion of 1951 (this time with mimeographed material and a printed chart (above P.B. p. 33 at R. 31). Illinois could achieve and maintain automatic and almost perfect equality of representation in its House of Representatives (3 elected from each district by cumulative voting) merely by each Representative voting his own election returns on legislative enactments of the whole House and passage requiring majorities of the total State vote of electors who voted for Members elected. This would replace the traditional rule of "One Legislator, one vote" with "One Elector, one vote" and comply with the Equal Protection Clause of Amendment XIV-1[1]

---

[1] This proposal came to a vote in 1963 on House Joint Resolution 43 (Same as S.J.R.-30 in R. 17-23). The Illinois Constitution Amendment Article did not permit its proposal in 1965. See folder, Honor Roll. (Appendix L. See also Western Political Quarterly for June 1959, 442-448.)

Instead, the long awaited "Governor's Plan" was introduced in the last few days of the 1953 session. It proposed a "compromise" of permanently limiting Cook County (then having more than half the State's population) to 24 Senators (18 of them in Chicago) while assuring the rest of the State 34 Senators and a safe control by 10 votes. The same divisions of the State were to elect Representatives on a population basis. Although the Senate Districts were to be permanent and changeable only by another amendment to the Constitution, and although the Illinois Constitution requires proposed amendments to be entered "in full" on the journals of each house and published "in full" at least three months before electors vote to adopt or reject in November 1954, these permanent districts were not apportioned until 1955, after the amendment was proclaimed adopted in 1954. (Constitution texts appear in Appendix C-D.)

The ambiguity of the text prevented a Court test of this evasion of mandatory procedures until the Illinois Supreme Court on 4 January 1964, in *Giannis* v. *Carpentier*, 2d 30 Ill. 24, 26, held: "Once the Senate Districts have been established, they are permanently fixed and may not be altered, revised or reallocated, except by Constitutional Amendment."

This Relator forthwith challenged the validity of this 1954 proclaimed amendment as not constitutionally proposed, and if used, would be a contravention of our United States Constitution in its Equal Protection Clause. (R. 38490) Relator invoked the original jurisdiction of the Supreme Court of Illinois requesting a Mandamus and Declaratory Judgment: a Mandamus on the Illinois State Electoral Board to recognize the 1870-1954 version of Article IV, and a Judgment declaring the 1954 proclaimed

amendment thereto invalid. The motion for leave to file the petition for original jurisdiction was denied 3 April 1964 (R. 38490, p. 8).

On 28 April 1964 Relator filed Complaint and Prayer for Relief (R. 1) in the Sangamon County Circuit Court. The Complaint relied chiefly on the Illinois Constitution and also, in paragraph numbered 10-3 (R. 5), and Prayer for Relief par. 3 (R. 5), on contravention of our United States Constitution.

On 18 June 1964, the Honorable Clem Smith, Judge, heard argument and decreed against Relator on all points, and specifically that there was no violation of either state or national constitutions (R. 24-25).

On 15 July 1964 The People . . . —Appellants served Notice of Appeal (R. 26-28) to the Supreme Court of Illinois, on all items in the Circuit Court decree including that which declared no conflict with our United States Constitution.

On 11 September 1964 The People . . . —Appellants filed their Brief (R. 31), on pages 28, 29 and 30 of which, they showed the 1954 proclaimed amendment's conflict with the Equal Protection Clause of our United States Constitution. Appellants protested against the Defendant-requested delays.

On 18 January 1965 the Supreme Court of Illinois heard oral argument and on 4 February 1965 announced and filed its Opinion (R. 49-59). It failed to rule on the purported amendment's invalidity, asserting "this argument (the Relator's) is of no real consequence, for in view of *Germano* v. *Kerner*, 378 US 560, 12 L.ed 2d, 1034, . . . it can no longer be contended that the area apportionment provisions of Article IV, Section 6, and its prohibitions against subsequent changes are valid." (R. 53)

The People . . . —Appellants' petition for a rehearing (R. 68) was denied on 18 March 1965 (R. 69). On the same day Justice Schaefer, joined by Justice Hershey, filed a dissent (R. 60-64) saying:

> "The primary contention of the relator is not answered in the majority opinion. (R. 65) . . . I see no escape from the conclusion that if the 1954 amendment meant that the Senate Districts, established without having been published or submitted to a constitutional referendum, could be changed only by constitutional amendment, the relator's contention is sound and the 1954 amendment was not validly adopted under the constitution of Illinois" (R. 61-62).

The federal Court held that the "area" and "permanent" features of the 1954-1955 Senate Districts were invalid under the Equal Protection Clause of our United States Constitution, and the Illinois Court held the remainder of the "amendment" to be separable and valid (R. 55-57). The Illinois Court also retained jurisdiction "to insure valid elections in 1966" (R. 59) and "until the 1970 census figures are available for legislative action" (R. 232).

In the course of this retained jurisdiction, The People . . . —Appellants drew into question other features of the 1954 proclaimed amendment to Article IV not invalidated by the *Germano* decision of the United States Court. The People . . . —Appellants also questioned the Illinois Supreme Court's final Opinion and Provisional Apportionment as failing to meet, as nearly as practicable, the standard of equality of the Equal Protection Clause of our United States Constitution (R. 218, 261-262).

On 22 March 1965, The People . . . —Appellants by Motion (R. 70, 71), asked the Illinois Supreme Court to hold invalid the postponement of the decennial reapportion-

ments from the first to the second General Assembly after the decennial U.S. Census, thereby making the 1st and 5th biennia of every reapportionment, 40 per cent thereof, to be in violation of the Equal Protection Clause of Amendment XIV. From 1870 to 1954 reapportionments were the duty of the 1871 General Assembly and each tenth year thereafter. In these days of rapid data processing, this should still be the duty of the earliest possible General Assembly. The Court denied this motion without comment 19 May 1965 (R. 85). (1870 text in Ap. D.)

During the first six months of 1965 the Illinois General Assembly was in regular session. Its House of Representatives had been elected by the State at large and was two-thirds Democratic; the Senate, safely Republican, had *de facto* status until it would be elected on a population basis. Both houses knew after the Illinois Supreme Court decision of February 4, that they must reapportion the State on a population basis in three areas, 1) Chicago, 2) the rest of Cook County, and 3) the remainder of the State, for 58 Senators and for 59 3-member Representative Districts. Whether or not they sensed that the time honored rule of "One Legislator, one vote" necessitated weighting electors by the ratio of the Average District Population to the Actual District Populations, they were well aware that "One Legislator, one vote" rule made political party gerrymandering tactics inevitable in any reapportionment procedures.

Therefore The People . . . —Appellants urged by Motions (R. 73-77; 94-95; 107; 227, 256-262) and Suggestions (R. 108-109; 124-132; 205-216; 218-222) that the Illinois Supreme Court hold that the Equal Protection Clause of our United States Constitution requires the Illinois House of Representatives to change its "One Legislator, one vote" rule to "One Elector, one vote", by requiring that

egislative decisions of the whole House be by majorities of all the State's electors who voted for the "members elected." This would alter the interpretation of the terms "members elected" (used in the Illinois Constitution about thirteen times (R. 257-258) but it would be in harmony with the averment of the enacting clause of Section 11 of Article VI: "Be it enacted by the People of the State of Illinois represented in the General Assembly."

Illinois is the only State where this system is now possible. Illinois has had nearly a century of experience with District Minority Representation, an essential part of the plan. Illinois has also had over half a century (since 1910) experience requiring the political party Committeemen to vote the number of their own electors. Illinois required the political party conventions nominating candidates for Representative elected by the State at large in 1964 to use a similar weighted vote. This is eminently practicable in Illinois.

The People . . . —Appellants urged the Court by motions and suggestions to apply to the Senate the District Minority Representation System advocated for the House of Representatives. To do this the Court needed only to ask for the elimination of enough common boundaries of single-Senator districts to effect the desired combinations to make 3-Senator Districts (op. cit. especially, R. 205-6 and Intervenors' Statement and apportionment). Ten copies of Interveners' Statement were sent to Illinois Supreme Court but were not filed by the Clerk of that Court as part of the Record of this case.

In both houses, representation would then be re-equalized on the very day of each election of legislators, not just pretending to do so as of 6½ or 10½ years before. Representation would be equalized more accurately than

ever before and vitalized as never before. It would simplify the whole reapportionment problem, our decennial headache.

If there is novelty in this plan, it is not the weighting of votes but the incidence of the weighting. Under the "One Legislator, one vote" rule we unequally weight *electors* to permit legislators to vote equally. Under this plan we weight the votes of *legislators* to permit electors to vote equally—and as the Equal Protection Clause of our United States Constitution requires.

On 11 May 1965 (R. 73-75) and 5 June 1965 (R. 93-95), The People . . . —Appellants, by Motion and Suggestions urged the Court to establish these proposals *before* adjournment on June 30. They included a text of a suggested Joint Resolution drafted at the request of Representative George M. Burditt, for a Constitution amendment that would include these proposals (R. 110-118).

On 24 June 1965, the Court requested (R 120-122) suggestions from the parties for procedures after June 30 in case the General Assembly adjourned without having made valid apportionments of legislative districts. Pursuant to that Court Order, The People . . . —Appellants, on 15 July 1965 filed a 10-page explanation of their District Minority Representation plus weighted Legislators' votes proposal with apportionment maps and district population data based on Senate Bill 251 (R. 132-133 208-210). They proposed that all 58 Senators be elected in 1966 and each 4th year thereafter on the District Minority Representation System used for the Illinois House of Representatives.

Defendant Scott (Republican) and Defendants Attorney-General *et al.*, (Democrat) both submitted suggested apportionments, both asserting computer perfection. There

followed trivial disputes over inaccuracies, perhaps of some relevance in a 2-party gerrymander contest (which it was), but of almost no significance were the Court to adopt The People . . . —Appellants' proposals, replacing the rule of "One Legislator, one vote", with "One Elector, one vote".

Supplementing their proposals, The People . . . —Appellants submitted tabulations and graphs comparing both of the Defendants' apportionments with the Appellants' proposal of combining their single-Senator districts, by deleting appropriate interior boundaries to form 3-Senator districts for elections after the manner of those for the House of Representatives. Bar graphs and tabulations presented the Per Cent Deviations from the State average (R. 204-207, 211-222).

Accompanying these tabulations and graphs was a statement (R. 218) in part as follows:

> "Reapportionments alone, even perfect ones, will not equalize representation in the General Assembly especially this year when the only population data used are six and a half years old. Up to now, all that has been done is to arrive at a beginning. Unless this Court, and all in this Cause, litigants and Counsel, Interveners, and Amici Curiae, are perspicacious enough to advance beyond this beginning, all our efforts have been exercises in futility, sound and fury, accomplishing nothing. We still deny electors equality and abridge their vote for members of the General Assembly to meaninglessness. Monkeying around districting with stale data is no answer even with *no* deviations from the average.
>
> . . .
>
> "Our Republican Form of Government requires, almost by definition, that electors should be equal. In Illinois we can make them equal, but we can *not*

do so as long as we decide on legislation by majorities of equal members of the legislature rather than by the representatives of the majority of equal electors.

"Therefore, to proceed from our present beginning, this Court should declare that both houses of the Illinois General Assembly shall be elected from districts by the century old Illinois System of District Minority Representation; and legislative decisions in both houses shall be determined by the representatives of a majority of the electors, each Senator or Representative voting his own election returns. This is the only constitutional solution for Illinois."

On 29 July 1965 the Supreme Court of Illinois entered an Order (R. 189-191 App. G) reporting that none of the plans submitted were completely acceptable and "requested that the parties hereto forthwith confer for the purpose of reconciling conflicting views . . . before August 15, 1965."

The People . . . —Appellants promptly sought such a conference by telephone and personal calls at the offices of Defendant's Counsel but evasive responses could be interpreted only as refusal (R. 226).

Therefore, The People . . . —Appellants sought once more to bring their proposals to the Court by Motion (R. 227-8, 256-262), duly served on Defendants, Interveners, and Amici Curiae, on Motion Day, Tuesday 24 August 1965, in the 30 North Michigan Avenue Chicago office of the Illinois Supreme Court. Justice Hershey presided and continued the motion to the full Court. The Motion called for four rulings: 1) That legislative decisions by "members elected" (mentioned 13 times in the Illinois Constitution) along with the Enacting Clause required by Section 11 of Article IV, to assert that enactments are "by the People of the State of Illinois represented in the Gen-

eral Assembly", means that the legislative decisions of both houses must be by members who were elected by the required majority of all the State's electors who had voted for the "members elected".

2) That legislative decisions by majorities of members who received less than the required majority of all the State's electors who had voted for members elected are in violation of the Equal Protection Clause of our United States Constitution.

3) That compliance with these equality of representation requirements, both houses of the General Assembly must be 1) elected by districts, not by the State at large, 2) under the Illinois System of District Minority Representation, 3) each legislator voting his own election returns on the legislative decisions of his own house.

4) That these rulings be effective for the 1966 elections of 58 Senators for 4-year terms and of 177 Representaitves for 2-year terms.

The day after The People . . . —Appellants presented this motion, Judge Campbell of the United States Three-Judge District Court of Northern Illinois, Eastern Division, also concerned with this Illinois Senate apportionment in the *Germano* v. *Kerner*, 63-C-291, case, called a Press Conference and announced that under his aegis, Pretrial Conferences (from which The People . . . —Appellants were excluded) had culminated in a Pretrial Memorandum of a Provisional Apportionment based on areas of agreement reached by the Defendants (erroneously termed "the Parties") "district boundaries were drawn by the Court in the instances where the parties could not agree."

The People . . . —Appellants moved to intervene in the *Germano* case and filed an *Interveners Statement.*

On 9 September 1965, the Illinois Supreme Court announced its opinion and Provisional Apportionment (R. 231-253) saying Judge Campbell's Pretrial Conferences had been with the Illinois Court's knowledge and approval. It adopted the Pretrial Apportionment of Judge Campbell who evidently had not even considered The People . . . —Appellants' proposals.

The Illinois Court's only comment on The People . . . —Appellants' proposals was a reference to *Reynolds* v. *Sims,* 377 US 533, in Part IV: "Mathematical nicety is not a constitutional requisite". Is this to imply that the Appellants' approach to "mathematical nicety" is an approach to unconstitutionality?

The Illinois Court adopted the People . . . —Appellants' suggestion that all 58 Senators be elected for 4-year terms in 1966 and 1970. With this exception, the Illinois Supreme Court has denied, almost entirely without comment (The Motion filed 21 June (R. 107) was denied "without prejudice" (R. 121)), all The People . . . —Appellants' motions, suggestions, and averments of conflicts with our United States Constitution.

On the same day, 9 September 1965, the Federal Court issued its order to show cause within ten days "as to why this Court should not now enter a final order finding said plan constitutional." The People . . . —Appellants' objections and proposals appear in the Intervener's Statement as follows:

> "Intervener's Statement Pursuant to Order of 9 September, 1965.
>
> This Intervener (Robert H. Engle, the Relator for The People of the State of Illinois vs. Otto Kerner, et al., No. 38848 in the Illinois Supreme Court) in the above captioned Cause, respectfully suggests the following observations:

The People of the State of Illinois, by the Relator (this Intervener) maintain that we can not achieve equitable equality of representation in either the Illinois Senate or the Illinois House of Representatives by reapportionments alone, nor by the election of the members of either house of the Illinois General Assembly by the State at large.

Elections by the State at large are practicable for the election of the Governor or United States Senator, but not, in a state as large as Illinois, for members of the legislature, when each elector is asked to choose 177 Representatives from 236 or more candidates. Or 58 Senators from 116 (or even 78) or more candidates. No such candidates are likely even to pretend to canvass the whole State. Electors are unable to consider that many candidates, and intelligently to choose the number to be elected, or even to vote for that many in the time permitted on election day. Electors are thus denied part of their vote.

In a state the size of Illinois, districts are essential to equitable representation. Illinois has concentrations of minority groups able to elect Representatives by districts who would be hopelessly submerged in a State at large election. Let us not forget that our Declaration of 1776 valued as 'inestimable' the right 'of large districts of People' to representation in the Legislature', and protested jeopardy thereto.

In Illinois, the election of members of the General Assembly by the State at large abridges Illinois' Republican Form of Government guaranteed by our United States Constitution in Article IV-4 seriously enough to be in contravention thereof.

When districts elect the members of a legislative body and all members have equally one vote each on legislative decisions, equality of representation depends on an impossible equality of district populations. This is recognized in the observation that

'mathematical nicety is not constitutionally required in devising reapportionment schemes.' Representation is further diluted at the district level when minority electors are likely to feel unrepresented or even mis-represented. This, however, is a commonplace of all elections except those of District Representatives in the Illinois General Assembly.

Illinois is the only State that provides for a minority Representative in every district, if the minority exceeds twenty-five per cent of the district's electors for this office. But equality of *district* representation still depends on the impossible equality of district populations as in all other states. An additional defect in Illinois is, that in usually more than half the districts, electors are effectively disfranchised for this office in the November elections. Their vote for Representative, after each candidate has voted for himself, makes no difference whatever in the result. In the other districts, where both political parties nominate two candidates, the electors are compelled to accept 3 of the 4 candidates, which is almost as bad.

Electors' votes after the Primary election now have no, or very little, effect on the next legislature. They can increase their vote for a meritorious candidate and reduce that for a rascal but all three from the district will vote equally in the legislature regardless of how or whether the elector voted in November. This effectively disfranchises the electors for this most important office in the November elections, abridges the Republican Form of Government, and mocks the principle of 'one elector, one vote'.

The proposed apportionment as worked out by the Defendants and the State and Federal Courts as of 9 September 1965, has all these defects. Altho deviations from equality of district populations as of 1 April 1960 varied from 7.73 per cent below the State average of 173,813 to 7.04 per cent above it, a range of less than 15 per cent, this is not evidence of equi-

table equality for the 1966 and 1970 elections, more than 6½ and 10½ years later. With the shifts in relative populations known to have occurred, the low deviations from 1960 equality is rather evidence of *in*equality for 1966 and 1970. The excuse that 'mathematical nicety is not required' is not to hold that current equality 'as nearly as practicable' may constitutionally be avoided. Our objective still is 'one elector, one vote'—not in 1960, but in 1966 and 1970 'as nearly as practicably' we can. This 9th of September proposed apportionment does *not* achieve it. There is a much better way that will.

This, The People of Illinois, by this relator and Intervener, now propose. We make only slight adjustments in the 9/9/65 apportionment. The district boundaries are exactly as laid out in that apportionment, with interior boundaries eliminated so as to combine three districts into one for the election of three Senators. Because 58 is not divisible by 3 into whole numbers, Lake County and DuPage County districts would elect two Senators each. All districts would elect their Senators by the Illinois System of District Minority Representation used in the election of State Representatives since 1870,—except 1964. Parenthetically it may be remarked that Delegate Joseph Medill introduced this plan in the Constitution Convention of 1870 for the election of Senators as well as for Representatives, but probably because of its novelty, he withdrew its application for the Senate, and altho he could not get the Convention to adopt it for Representatives, he did succeed in having it presented to the People as an alternate plan. The People chose the plan the Convention was too timid to recommend, and have retained it for nearly a century.

One additional perfecting feature reverses the present procedure of unequally weighting electors votes in order to permit the elected legislators to vote in club-like equality, one vote each on legislative deci-

sions regardless of the number of constituents sending him to the Assembly. Instead, each Senator and Representative on legislative decisions, would vote each his own election returns, the decision turning on the required (simple or 2/3) majorities of the State's *electors* voting for elected members, rather than those majorities of the *members* elected. Thus, we automatically and almost perfectly re-equalize representation at every election of legislators,—not a re-gerrymander once in 10 years—, a 'one elector, one vote' *in reality*, simple, practicable, and amply tested in many areas. This would meet constitutional requirements for 1966 and 1970 unquestionably. After that the General Assembly's plan for an amended Constitution may be in force. This is required *now*, not as legislation, but to grant minimal judicial relief for the time being. This plan would:

1. Achieve and maintain 'one man, one vote'; no other does.
2. Outmodes political party gerrymanders, party strength no longer depending on the location of district boundaries.
3. Elections of legislators by the State at large becomes unnecessary and obsolete.
4. Electors' votes for legislators become not only equalized but vitalized.

Our duty now is to give relief to the People from the inequalities they now suffer. They would receive very imperfect relief from the 9/9 proposal. Our proposal herein explained, is the only *sure* way to meet the standards of our United States Constitution. Future reapportionments (including that with which the Governor's Reapportionment Commission is now struggling) would be amazingly simplified. Electors' votes for Representative instead of being meaningless would be imbued with vitality and so would their votes for Senator.

Illinois as the only State with any experience in District Minority Representation, has a unique opportunity to lead in the solution of this vexing, nationwide, decennial headache, and these Courts, by granting this needed relief, can help. As Senator Keating once remarked, 'We can not let history record that the solution to this problem was in our hands, and we let it slip away!', we must act!

Both the United States District Court for the Northern District of Illinois, Eastern Division, and The Supreme Court of the State of Illinois should order:

1. The election of Representatives or of Senators in the Illinois General Assembly by the State at large, contravenes our United States Constitution in Article IV-4, and the Equal Protection Clause of Amendment XIV.

2. The 58 Senators for the Illinois General Assembly shall be elected in 1966 and 1970 for four-year terms, by the Illinois System of District Minority Representation similar to that used for the district elections of Representatives in the General Assembly.

3. On the legislative decisions of each house of the General Assembly members elected by the Illinois System of Minority Representation, shall vote their own election returns, the decision turning on the required (e.g., simple or 2/3) majorities of the total electors' votes for members elected, substantially as spelled out in HJR-43 and SJR-30, 73d G. A.

4. The apportionments of the three areas of Illinois: Chicago, the rest of Cook County, and the remainder of Illinois, shall be substantially as shown in the accompanying maps and legal descriptions."

On 12 October 1965 the United States District Court ORDERED, ADJUDGED and DECREED that the Provisional Reapportionment plan adopted by the Illinois Supreme Court on September 9, 1965 is in accordance with

federal law and declared to be the senatorial map for the election of Illinois State Senators in 1966, and thereafter until redistricted in accordance with law.

The Retained Jurisdiction of the Illinois Supreme Court still continues. Its Provisional Reapportionment of Senate Districts, and denials of Appellants' proposals apparently are to continue, the objections of The People . . . —Appellants, notwithstanding. These issues, The People . . . —Appellants now appeal to our United States Supreme Court.

The People . . . —Appellants brought to the Supreme Court of Illinois the question of the validity of the entire 1954 proclaimed amendment to sections 6, 7, and 8 of Article IV of the Illinois Constitution, as never validly proposed, and in its terms and main objective, in conflict with the Equal Protection Clause of our United States Constitution. The Illinois Court failed to rule on this question, asserting it was of no real consequence in view of the federal Court holding the plan for the Illinois Senate to be invalid (R. 53; 60, 61-2). The Court held the invalid parts, the proclaimed amendment's main objective, as separable, and the remainder valid (R. 55-57), and retained jurisdiction until the 1970 census figures are available for legislative action (R. 232).

Under this retained jurisdiction The People . . . —Appellants drew into question the constitutionality of other parts of said Article IV as in conflict with a Republican Form of Government and Amendment XIV of our United States Constitution. These are:

1. The unnecessary postponement of decennial reapportionments from the first to the second General Assembly after the U.S. Census of Population, making the first and fifth biennia of each reapportionment in violation of the equal Protection Clause (R. 71).

2. The effective disfranchisement of electors in the November elections of Representatives in the General Assembly, by the elevation of the "One Legislator, one vote" rule, over the "One Elector, one vote" rule, thus abridges the Republican Form of Government, and denies electors the right of a United States citizen to a meaningful vote and violates the Equal Protection Clause (R. 125-6).

3. The Republican Form of Government, the Equal Protection Clause of our United States Constitution, and the enacting clause, "Be it enacted by the People of the State of Illinois represented in the General Assembly" (Section 11 of Article IV), require the interpretation that legislative decisions of the whole house to be by majorities of all the State's electors who voted for "members elected", rather than by majorities of "members elected" as heretofore interpreted (R. 124-132, 218, 227, 256-8).

4. For states the size of Illinois, experience has shown that the election of members of the General Assembly by the State at large puts an unreasonable and practicably impossible task both on the candidates in canvassing the State and on the electors in considering 236 or more candidates and selecting 177 Representatives, and on election day marking a complete ballot in the time permitted.

5. Failure of the Illinois Court to adopt the requested rulings invalidates the Court's apportionment of Senate Districts and the validity of 1966 and subsequent elections.

GROUNDS ON WHICH FEDERAL QUESTIONS ARE SUBSTANTIAL

The Federal Questions raised in this appeal are of the same kind and substantiality as those raised in *Baker* v. *Carr,* 369 US 186, 1962, and those that followed in its train including the group of cases decided with *Reynolds* v. *Sims* 377 US 533.

In addition, this case raises new aspects of these questions and opens the possibility of 1) approaching much nearer to the now adumbral standard of equality required by the Equal Protection Clause, and 2) a simplification of the problem of achieving and maintaining this required equality. This plan is admittedly novel for legislative bodies, but evolutionary progress in all areas depends on novelties and the proving of their worth. For the first time, this Cause mentions the underlying premise of all our current re-equalization of representation procedures, namely, the rule in legislative bodies of "One Legislator, one vote", with its corollary that electors' votes are weighted by the ratio of the average district number of electors to the actual number in each district. This Cause raises the question: Which should be superior, "One Legislator, one vote", or "One Elector, one vote"? This proposal supports the proposition that there is nothing sacred in the first but there should be something sacred in the second, and that, protected by the Equal Protection Clause of our United States Constitution.

The Supreme Court of the United States has wisely preferred to follow a case-by-case development of the standard of permissible deviations from the absolute "equality" of the Equal Protection Clause. The proposals brought by The People . . . —Appellants in this Cause show the possibility of a much nearer approach to "equality" and, just as important perhaps, it shows a way to simplify the

whole reapportionment problem and relieve the Courts of costly litigation.

New questions presented are:

1. May Illinois unnecessarily postpone decennial reapportionments from the *first* General Assembly after the U.S. Census Population, which had that duty from 1870 to 1954, to the *second* General Assembly, making the 1st and 5th biennia of each reapportionment—40 per cent thereof—in violation of the Equal Protection Clause?

2. Is not the effective disfranchisement of Illinois electors in the November elections of Representatives in their General Assembly, an abridgement of the Republican Form of Government and of Section 1 of Amendment XIV?

3. Should not the legislative decisions of the Illinois House of Representatives, elected in the Illinois System of District Minority Representation, be by majorities of all the State's electors who voted for the "members elected" instead of by majorities of "members elected"?

4. Should not the Senate Districts in the apportionment adopted by the Illinois Supreme Court on 9 September 1965, be grouped into two- or three-Senator districts to elect the Senate on the District Minority Representation plan, each Senator, on the legislative decisions of the whole Senate, voting his own election returns? Should not the Courts, both State and Federal, at least have considered this proppsal?

5. In a State the size of Illinois, are not the elections of either house of the General Assembly by the State at large, such unreasonable and practicably impossible tasks,—for candidates in canvassing the State, and for electors in considering 236 or more candidates, selecting 177 of them, and marking a complete ballot (and no more) in the time permitted,—as unconstitutionally to abridge

the Republican Form of Government, and to deny rights protected by Section 1 of Amendment XIV?

Questions 2, 3, and 4 might be summarized as: Should not the Illinois Supreme Court in the course of its retained jurisdiction to insure valid elections in 1966 and 1970, have provided for a Senate to be elected once every four years (as it did) on the District Minority Plan and have provided that the legislative decisions of the whole house in both the Senate and the House, be by each member voting his own election returns, majorities turning not on the rule of "One Legislator, one vote", but on the rule of "One Elector, one vote"?

This Cause continues the train that includes Magna Charta of 1215, Parliament over Crown in 1688, The Declaration of 1776, the Clashes and Compromises of 1787 to 1870 including not only Amendments XV but also the 1870 Illinois System of District Minority Representation. The *Brown* v. *Board of Education, Baker* v. *Carr,* and *Reynolds* v. *Sims,* and this case are recent developments.

Achieving and maintaining equitable equality of representation and vital control through the ballot is still to be achieved, and until then, a decennial reapportionment headache. One Elector, one vote has not yet been perfected. This Cause should help. It can put a much needed vitality into the elections of the Illinois State legislatures never possible without it. Other states may benefit, rejection delays the solution.

Respectfully submitted,

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APPENDIX

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APPENDIX A

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL DISTRICT
SANGAMON COUNTY, ILLINOIS

No. 1144-64

THE PEOPLE OF THE STATE OF ILLINOIS on the relation of ROBERT H. ENGLE,

Plaintiff,

— VS —

OTTO KERNER, as Governor of the State of Illinois and Chairman of the State Electoral Board, et al.

Defendants.

D E C R E E
(Filed June 18, 1964)

This cause having come on to be heard upon the complaint of plaintiff herein, the answer of defendants thereto, and the court, after arguments by counsel for the respective parties and being fully advised in the premises, FINDS that the court has jurisdiction of the subject matter of this cause and the parties thereto.

THE COURT FURTHER FINDS:

1. That each of the plaintiff's prayers for relief is specifically denied;

2. That the 1954 amendment to Article IV was validly proposed and does not violate either the Constitution of Illinois or that of the United States;

3. That each of the other questions raised of violations of either the Illinois or United States Constitution is without merit;

4. That the Senatorial Districts apportioned in 1901 ceased to exist after 1955;

5. And that the plaintiff's complaint is substantially insufficient in law and the plaintiff is not entitled to any relief.

It Is Therefore Ordered, Adjudged and Decreed by The Court that the above entitled action be dismissed and the same is hereby dismissed at relator's costs.

Dated this 18th day of June, A.D. 1964.

Enter:

Clem Smith

Judge

APPENDIX B

Opinion filed 4 February, 1965

Docket No. 38848—Agenda 23—January, 1965.

The People *ex rel.* Robert H. Engle, Appellant, v. Otto Kerner, Governor, *et al.*, Appellees.

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

This is an appeal from a decree of the circuit court of Sangamon County denying relator's prayer for declaratory judgment and finding, *inter alia,* that the 1954 amendment to article IV of the Illinois constitution was validly proposed and does not violate either the constitutions of Illinois or the United States. Important questions concerning constitutional legislative reapportionment are here presented. The cause is here directly as questions arising under both the United States and State constitutions are involved. Illinois Const. art. VI, sec. 5; Supreme Court Rule 28—1.

Relator, appellant herein, a voter, taxpayer and potential candidate for the Illinois House, instituted suit in the circuit court asking for a declaratory judgment that (1) this amendment to article IV of the Illinois constitution (article IV, secs. 6, 7, 8,) is totally invalid; (2) the 68th (1953) General Assembly proposed amendments to more than three articles of the constitution in violation of the Gateway Amendment (article XIV, section 2,); (3) the 68th General Assembly was without power to propose any amendment denying people equality (on a population basis) of representation in the Illinois senate or in constitutional conventions; (4) the General Assembly consists of 51 senators and 153 representatives (instead of the pres-

ent 58 and 177, respectively) under the last valid reapportionment of 1901 pursuant to the constitution of 1870; and (5) the 1964 amendments to the Election Code are invalid.

The 1954 amendment to article IV specifically provides:

ARTICLE IV

"§ 6. The General Assembly in 1955 shall redistrict the state for the purpose of electing state senators. There shall be fifty-eight senatorial districts. Cook county shall have twenty-four of the districts. These twenty-four districts shall be located as follows: Eighteen in the territory that is within the present corporate limits of the city of Chicago; and six in the territory that is in Cook county outside such corporate limits. The remaining one hundred and one counties of the state shall have thirty-four of the senatorial districts.

"All senatorial districts shall be formed of contiguous and compact territory. In their formation, area shall be the prime consideration.

"The senatorial districts shall be numbered one, two, three, and so forth, including fifty-eight. Each such disrict shall elect one senator, whose term of office shall be four years. Senators elected in districts bearing even numbers shall be elected in 1956 and every four years thereafter; and senators elected in districts bearing odd numbers shall be elected in 1958 and every four years thereafter.

"§ 7. The General Assembly in 1955 and in 1963, and every ten years thereafter, shall redistrict the state for the purpose of electing state representatives. There shall be fifty-nine representative districts. In the 1955 redistricting Cook County shall have thirty of the districts. These thirty districts shall be located as follows: Twenty-three in the territory that is within the present corporate limits of the City of Chicago; and seven in the territory that is in Cook County out-

side such corporate limits. In the 1955 redistricting, the remaining one hundred and one counties of the state shall have twenty-nine of the representative districts. In redistricting subsequent to the 1960 census, and thereafter, the fifty-nine representative districts shall be divided among (1) that part of Cook County that is within the present corporate limits of the City of Chicago, (2) that part of Cook county that is outside such corporate limits, and (3) the remaining one hundred and one counties of the state, as nearly as may be, as the population of these three divisions bears to the total population of the state.

"Representative districts shall be formed of contiguous and compact territory, and shall contain, as nearly as practicable, a population equal to the representative ratio; outside of Cook County, such districts shall be bounded by county lines unless the population of any county entitles it to more than one representative district. The representative ratio for the entire state shall be the quotient obtained by dividing the population of the state by fifty-nine. No representative district may contain less population than four-fifths of the representative ratio.

"Three representatives shall be elected in each representative district in 1956 and every two years thereafter. The term of office shall be two years. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates as he shall see fit: and the candidates highest in votes shall be declared elected.

"§ 8. In performing its duties under Sections 6 and 7 of this amendment, the General Assembly shall redistrict and reapportion in a single legislative enactment. If, however, the regular session of the General Assembly in 1955 as to both senatorial and represen-

tative districts or in 1963, or any ten years thereafter as to representative districts, fails by the first day of July to redistrict the state into such districts, then the redistricting shall be accomplished by a commission. Within thirty days after such first day of July, the state central committee of each of the two political parties, casting the highest votes for governor at the last preceding gubernatorial election, shall submit to the governor of the state a list of ten persons. Within thirty days thereafter, the governor shall appoint the commission of ten members, five from each list. If either of the state central committees fail to submit the list within the specified time, the governor, within the specified time, shall appoint five members of his own choice from the party of such committee. Each member of the committee shall receive $25.00 a day, but not more than $2,000 for his services.

"This commission shall redistrict the state into senatorial districts and into representative districts in the manner specified above. This commission shall file with the secretary of state a full statement of the numbers of the senatorial and representative districts and their boundaries. No such statement shall be valid unless approved by seven members of such commission.

"After such statement is filed, senators and representatives shall be elected according to the statement and the districts therein determined, until a redistricting and reapportionment are thereafter made by the General Assembly as provided in this amendment. If, however, the statement is not filed within four months after the commission is appointed it shall stand discharged. Thereupon, all senators, scheduled for election at the next election for state senators, and all state representatives shall be nominated and elected at the next election from the state at large. Following such an election at large, the General Assembly at its next regular session shall perform the duties specified in this amendment. But if such a General Assembly

fails to perform these duties, then another commission, as specified in this Section 8, shall be appointed in like manner, with like duties, and power, and with like effect; and so forth until a valid senatorial and representative redistricting and reapportionment are secured in this 1950 decade and each decade thereafter. But there can be only one valid senatorial and representative redistricting and reapportionment during a particular decade."

Relator first argues that because the amendment to rticle IV does not *itself* provide a legislative redistricting heme, it violates article XIV, section 2, which requires at a proposed constitutional amendment be "entered in ll" on the Journals of both Houses of the legislature and published in full" at least three months preceding the eneral election. It is maintained that the proposed amendent must itself describe the precise geographical boundies of the district, as well as all other details, in order comply with "entered and published in full" requirents. However, relator cites no provision in the constituon nor any other authority for this proposition: *i.e.* that e constitution may not establish reapportionment *standrds* and leave to the General Assembly the task of devisg a statutory scheme in compliance therewith. This has een the traditional method of reapportionment, and this urt has held that the legislature may exercise discretion reapportioning according to constitutional standards. See *People ex rel. Heffernan* v. *Carlock*, 198 Ill. 150, 160-; *People ex rel. Woodyatt* v. *Thompson*, 155 Ill. 451.) We See apportioning according to constitutional standards. id nothing constitutionally offensive in the procedures re employed.

Relator next argues that the effect of section 6 of article of the 1954 amendment, with regard to the Senate, was charge the succeeding General Assembly with the re-

sponsibility and the power to legislatively determine and freeze the senatorial districts, the only manner by which they might subsequently be changed being constitutional amendment, as "[o]nce the senate districts have been established, they are permanently fixed and may not be altered, revised or reallocated except by constitutional amendment. See *Donovan* v. *Holtzman*, 8 Ill.2d 87." (*People ex rel. Giannis* v. *Carpentier*, 30 Ill.2d 24, 26.) This, relator maintains, is to enable a legislature to enact merely by legislation that which may be undone only by constitutional amendment and therefore, in effect, violates the provisions of article XIV requiring a 2/3 majority vote in both houses and 2/3 majority vote of the electors concerning constitutional amendments.

However, this argument is of no real consequence, for in view of *Germano* v. *Kerner*, 378 U.S. 560, 12 L. ed. 2d 1034, wherein the United States Supreme Court reversed the district court's holding that the apportionment of the Illinois senate was constitutional and remanded the cause "for further proceedings consistent with the views stated in our opinions in *Reynolds* v. *Sims* (377 U.S. 533) and in other cases related to state legislative apportionment decided along with Reynolds," it can no longer be contended that the area apportionment provisions of article IV, section 6, and its prohibitions against subsequent legislative change are valid.

Nor do we find constitutional infirmities in the contention that the Gateway Amendment (Ill. Const., art XIV, sec. 2), has been violated by the 68th General Assembly, although relator argues that the provisions thereof were disregarded in that, while on their face the proposed constitutional amendments proffered by the 68th General As-

sembly purported to amend only three articles, *i.e.* the canal article, the executive article, and article IV (the legislative article), the amendment to the latter article by implication amended the due process provision of article II, section 2, the free-and-equal election provision of article II, section 18, and the constitutional-convention provision, article XIV, section 1. Hence, it is maintained, amendments to more than the three-article limit were made. Since any implied amendment of the due-process and free-and-equal-election provisions is necessarily rendered nugatory by our holding that parts of article IV, section 6, are invalid, we need discuss only the undisputed implied amendment of the constitutional-convention provision.

In *City of Chicago* v. *Reeves,* 220 Ill. 274, we held that the forerunner (which prohibited the proposal by any one General Assembly of amendments to more than one article), of the Gateway Amendment applied only to express amendments and did not apply to "implied amendments or changes which were necessarily worked in other articles of the constitution by the express amendments of a particular article of the constitution." (220 Ill. at 284.) This principle is particularly applicable here, where the increase in the number of legislators in the express amendment to article IV necessarily increases the number of legislators required to call a constitutional convention and the number of delegates at such convention, and such implied changes are not, under *Reeves,* objectionable.

Relator also contends that the provisions of the Election Code dealing with the 1964 at-large representative election (S. H. A., chap. 46, par. 8A—1 *et seq.* March 1964 pamphlet) are invalid in that (1) they are based on the allegedly void 1954 constitutional amendment, and (2) that since the provisions are restricted to the year 1964, they con-

stitute "special legislation" proscribed by article IV, section 22, of the Illinois constitution. In view of our subsequent determination herein that the federally unconstitutional portions of the 1954 constitutional amendment do not invalidate the balance of the amendment and that, insofar as the provisions of the Election Code here under attack are restricted to the year 1964, the question is now moot, these contentions are without merit.

It should be noted that in *People ex rel. Giannis* v. *Carpentier,* 30 Ill.2d 24, we held that article IV, section 8, did not contemplate Senators running at large where there had been a failure to reapportion the House of Representatives. That decision was based substantially upon the language employed in sections 6, 7 and 8 and the principle that the constitution should wherever possible be construed to avoid irrational, absurd, or unjust consequences. (30 Ill.2d 24, 28-30.) Our statement therein regarding the immutability of the 1955 senatorial districts, while lending justification to the ultimate decision, was not necessary to the determination of the issue presented, *i.e.,* whether the Senators coming up for election in 1964 were obliged to run from the State at large. As a consequence, the invalidity above noted wrought in our constitution by a change in Federal constitutional interpretation does not affect the ultimate construction given article IV, section 8, in *Giannis.* Hence, the provisions of section 8 dealing with at-large representative elections do not govern senatorial elections.

While it is apparent that the second paragraph of section 6 is constitutionally unsound under the rationale of *Reynolds* v. *Sims,* 377 U.S. 533, 84 S. Ct. 1362, 12 L. ed. 2d 506, and that the first paragraph thereof is likewise invalid insofar as it purports to allot specified numbers of districts

to various geographical areas, it does not necessarily follow that the entire amendment must fall. The principle inherent in all sections of the amendment, *i.e.*: that the State shall be divided into three principal political regions, is not obnoxious *per se* but only when the equality-of-population principle is significantly diluted (*Reynolds* v. *Sims*). As the United States Supreme Court there said (84 S. Ct. 1390): "A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." And again at page 1391: "* * * a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering." It is clear that the number of districts allocable to each region cannot be frozen into the constitution, since population changes may necessitate substantial revision from time to time. We therefore conclude that, while the first paragraph in section 6 is unconstitutional insofar as it allocates specified numbers of districts to designated geographical areas without reference to population, and the second paragraph is unconstitutional *per se*, the principle of dividing the State into three major regions consisting of (1) the city of Chicago, (2) the portion of Cook County lying outside the city of Chicago, and (3) the balance of the State, as made manifest in the remaining constitutionally valid portions of the amendment, is compulsory insofar as it can be used compatibly with the equality-of-representation theme in any future redistricticting of the Senate.

Since it is not argued that other provisions of sections 6, 7 and 8 of article IV clash with Federal constitutional requirements, the inquiry now becomes whether the above noted partial unconstitutionality demands total invalidity of these sections. This is, in turn, determined by whether the admittedly invalid portions are independent and severable from the other provisions and whether "it was the purpose of the law to accomplish two or more objects." *Jackson* v. *Blair,* 298 Ill. 605, 609; see also *People ex rel. Adamowski* v. *Wilson,* 20 Ill.2d 568, 582; *McDougall* v. *Lueder,* 389 Ill. 141, 155; *People ex rel. Dougherty* v. *City of Rock Island,* 271 Ill. 412, 422.

We believe that sections 6, 7 and 8 manifestly satisfy the tests of independence, and hence, severability. The provisions (1) give the General Assembly the power to redistrict the House of Representatives, with express provision that the latter is to be determined on the basis of population, (2) provide for periodic reapportionment of the House (3) establish the number of senatorial and representative districts and the number of legislators to be elected from each district, (4) require that senatorial and representative districts be formed of contiguous and compact territory, (5) provide for terms of office of the legislators and when they are to be elected, and (6) give due regard to the three separate, traditional regions of the State. The purposes sought to be achieved are clearly multiple, independent, and severable.

Relator maintains, however, that the unconstitutional portions of the amendment are of a vital nature, and that without them it cannot be said the remaining valid portions would have been enacted; hence, the entire amendment must fall. A late and controlling expression thereon is *People ex rel. Adamowski* v. *Wilson,* 20 Ill.2d 568, 582,

which quotes with approval the following language in *McDougall* v. *Lueder*, 389 Ill. 141, 155: "The fact that a part of an act is unconstitutional does not require that the remainder shall be held void unless all the provisions are so connected as to depend upon each other. The valid and invalid provisions may even be contained in the same sentence and yet be perfectly distinct and separable so that the former may stand though the latter fall." We then held: "If what remains after the invalid portion is stricken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render the entire section unconstitutional unless it can be said that the General Assembly would not have passed the statute with the invalid portion eliminated. [Citing cases]." We believe it cannot fairly be said that, since area alone is a constitutionally impermissible basis for districting and the major geographical divisions are retained insofar as compatible with population requirements, the remaining portions of the amendment would not have been adopted. We therefore hold that, except for the first two paragraphs of section 6, the provisions of sections 6, 7 and 8 of article IV referred to above are valid, subsisting, integral parts of the Illinois constitution. It should be expressly noted here that, while we have held part of the plan evidenced by the first two paragraphs of section 6 to be invalid, the principle implicit therein and elsewhere manifest in the amendment, *i.e.* that each legislative district shall be wholly included within one of the three traditional regions of the State, still remains.

Since the portion of article IV, section 6, authorizing Senate redistricting was limited by its terms to 1955, it becomes necessary to determine whether, since there is no express constitutional provision granting power to the legislature to reapportion the Senate, the General Assem-

bly has the power to do so. As the drafters of sections 6, 7 and 8 envisioned a permanently apportioned Senate based upon area, no reapportionment provision (other than for 1955) was necessary. See *People ex rel. Giannis* v. *Carpentier,* 30 Ill.2d 24.

It is well settled that *de facto* office-holders, as we now have in the Senate, are vested with complete authority to act as such, particularly in the absence of any *de jure* officers. (See *Lavin* v. *Commissioners of Cook County,* 245 Ill. 496, 505-06; *Harvey* v. *Sullivan,* 406 Ill. 472, 470.) This principle, applied here, is in accordance with expressions in United States Supreme Court decisions, which have *assumed* that existing State legislatures, although elected from unconstitutional districts, have full power to act. (*Maryland Committee for Fair Representation* v. *Tawes,* 377 U.S. 656, 676; 12 L. ed. 2d 595; *Reynolds* v. *Sims,* 377 U.S. 533, 586; *Roman* v. *Sincock,* 377 U.S. 695, 699.) It would therefore seem that plenary legislative power is still vested in the General Assembly as presently constituted.

Formerly (prior to the 1954 amendments to article IV) the General Assembly had the power to reapportion its election districts. (See *Fergus* v. *Kinney,* 333 Ill. 537; *People ex rel. Fergus* v. *Blackwell,* 342 Ill. 223; *People ex rel. Woodyatt* v. *Thompson,* 155 Ill. 451; *Fergus* v. *Marks,* 321 Ill. 510). As has been stated, the 1954 amendment made it unnecessary, with regard to the Senate, for the further exercise of redistricting power by the legislature. However, this power was not expressly taken away, and, where an unanticipated change in Federal constitutional interpretation upsets the language of the Illinois constitution, we can see no reason forbidding the revitalization of this traditional and inherent reapportionment power.

We have held that our legislature has the inherent power to enact legislation not expressly prohibited by the constitution, and that, moreover, "The Illinois legislature does not look to the State constitution for power to act, but looks to it and the Federal constitution only for restrictions upon its powers to act. (*Fenske Bros. Inc.* v. *Upholsterers International Union,* 358 Ill. 239; *Nielsen* v. *City of Chicago,* 330 Ill. 301; *Taylorville Sanitary District* v. *Winslow,* 317 Ill. 25.) Every subject within the scope of civil government which is not within some constitutional inhibition may be acted upon by the General Assembly. (*Sutter* v. *People's Gas Light and Coke Co.* 284 Ill. 634.)" *Locust Grove Cemetery Ass'n* v. *Rose,* 16 Ill.2d 132, 138.

Other courts, finding themselves faced with the same dilemma here before us, have sustained the inherent power of unconstitutionally districted legislatures (because of the change in Federal law) to reapportion. (See *Maryland Committee for Fair Representation* v. *Tawes,* 228 Md. 412, 180 A. 2d 656, 670; *LeDoux* v. *Parish Democratic Executive Committee,* 244 La. 981, 156 So. 2d 48; *Harris* v. *Shanahan,* 192 Kans. 183, 387 P.2d 771; *Butteworth* v. *Dempsey* (D. Conn.), 229 F. Supp. 754; *Buckley* v. *Hoff* (D. Vermont), 234 F. Supp. 191). We hold, therefore, that the General Assembly has the power to redistrict the Senate.

It is to be observed, however, that such reapportionment and redistricting scheme as may be enacted must, in the light of the language used in *Reynolds* v. *Sims,* provide for periodic review thereof as related to interim population changes. While not purporting to establish an inflexible standard of frequency of reapportionment, that case is authority for the proposition that decennial reapportionment "would clearly meet the minimal requirements for

maintaining a reasonably current scheme of legislative representation," and that reapportionment with less frequency "would assuredly be constitutionally suspect." 84 S. Ct. 1382-3, 12 L. ed. at 540.

A constitutionally valid plan of election must be completed, under *Reynolds* v. *Sims,* by 1966, and a Federal court is now being asked to remedy the malapportionment existing in the Illinois Senate (*Germano* v. *Kerner, Civil* No. 63C-291, N.D. Ill.) (on remand from the U.S. Supreme Court) in the event the General Assembly does not do so before August 2, 1965. While we trust the General Assembly will succeed in its task, we must, in view of the unfortunate 1964 House apportionment experience, (see *People ex rel. Spence* v. *Carpentier,* 30 Ill.2d 43) consider the possibility of failure.

As the final forum available in this State, it is our responsibility to construe and apply provisions of our State and the Federal constitutions as related to the problems of legislative reapportionment. We conceive it to be the responsibility of the State of Illinois to establish its own constitutionally selected legislative body, and that the State agencies, both historically and logically, are the proper forum for resolution of the problems therein, consonant with the Federal constitutional interpretations relating to equality of representation. The highest courts of our sister States have so held in *Butcher* v. *Bloom,* 415 Pa. 438, 203 A. 2d 556; *State ex rel. Reynolds* v. *Zimmerman,* 22 Wis. 544, 126 N.W.2d 551; *Davis* v. *McCarty* (Okla.), 388 P.2d 480. Such action has been approved by the United States Supreme Court. (*Maryland Committee for Fair Representation* v. *Tawes,* 377 U.S. 656, 674, 84 S. Ct. 1429, 1439, 12 L. ed. 595; *Scranton* v. *Drew,* ——U.S. ——, 13 L. ed. 2d 107.) It is also evident that the under-

lying principle that State courts should be given priority in resolving similar questions was a factor motivating Congress in the enactment of subparagraph (5), section 2284, Title 28, U.S.C.A. All parties to this proceeding either request or concede that we may retain jurisdiction.

We have expressed confidence that the General Assembly will successfully perform its duty to enact a constitutionally valid plan during its current session. Nevertheless, we retain jurisdiction of this cause for the purpose of taking such affirmative action as may be necessary to insure that the 1966 election is pursuant to a constitutionally valid plan. We do not here determine whether, in the absence of a constitutional legislatively determined plan, language in *Tawes,* and in *Lucas* v. *44th Gen. Assembly of Colorado,* 84 S. Ct. 1472, 12 L. ed. 2d 632, and related United States Supreme Court decisions, requires us to adopt, simultaneously, provisional reapportionment and redistricting plans for both houses.

The judgment of the Sangamon County circuit court is affirmed insofar as it does not conflict with this opinion and is otherwise reversed. Jurisdiction of this cause is retained.

Affirmed in part and reversed in part, and jurisdiction retained.

APPENDIX C

The Constitution's 1870 text of Article IV is simple, well known, one third the length of the 1954 version.

Senatorial Apportionment

§6. The General Assembly shall apportion the State every ten years, beginning with the year one thousand eight hundred and seventy-one, by dividing the population of the State, as ascertained by the federal census, by the number fifty-one, and the quotient shall be the ratio of representation in the Senate. The State shall be divided into fifty-one senatorial districts, each of which shall elect one senator, whose term of office shall be four years. The Senators elected in the year of our Lord one thousand eight hundred and seventy-two, in districts bearing odd numbers, shall vacate their offices at the end of two years, and those elected in districts bearing even numbers, at the end of four years; and vacancies occurring by the expiration of term shall be filled by the election of senators for the full term. Senatorial districts shall be formed of contiguous and compact territory, bounded by county lines, and contain as nearly as practicable an equal number of inhabitants; but no district shall contain less than four-fifths of the senatorial ratio. Counties containing not less than the ratio and three-fourths, may be divided into separate districts, and shall be entitled to two Senators, and to one additional senator for each number of inhabitants equal to the ratio, contained by such counties in excess of twice the number of said ratio.

Minority Representation

§§ 7 and 8. The House of Representatives shall consist of three times the number of the members of the Senate, and the term of office shall be two years. Three representatives shall be elected in each Senatorial district at the general election in the year of our Lord one thousand eight hundred seventy-two, and every

two years thereafter. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected.

This text has been definite and well known for 95 years
h this difference: since *Baker* v. *Carr* (369 US 186) in
2, malapportionment after the first year after the
ennial U.S. census is a justiciable complaint to which
te and Federal courts are open for relief. The stand-
s of equality of representation in the 1870 Illinois Con-
ution comply fully with *Baker* v. *Carr* and *Reynolds* v.
s.

This Relator has requested the Illinois Supreme Court
retain jurisdiction until equality of representation is
ieved and suggested the use, if necessary, of weighting
slators votes as spelled out in HJR-43 and SJR-30, 73d
.

APPENDIX D

No. 38848—People ex rel. Engle, vs. Otto Kerner, as Governor, etc., et al., Dissenting opinion of Mr. Justice Schaefer filed March 18, 1965, upon denial of petition for rehearing—Mr. Justice Hershey joins in the dissent.

Mr. JUSTICE SCHAEFER dissenting:

I agree with the opinion of the majority of the court insofar as it holds (1) that no more than three constitutional amendments were proposed by the 68th General Assembly; (2) that issues concerning the validity of those provisions of the Election Code that relate to the 1964 at-large election of representatives are now moot, and (3) that the present members of the state Senate, although elected from discriminatory districts that violate the constitution of the United States, nevertheless have *de facto* authority to act as members of the Senate of Illinois. But other conclusions are reached with which I can not agree.

The primary contention of the relator is not answered by the majority opinion. That contention is that the constitution of Illinois was not complied with in the adoption of the 1954 reapportionment amendment. The argument is that if senatorial districts once fixed by the legislature can be changed only by constitutional amendment, the districts so fixed have been made a part of the constitution without having been published and without having been submitted to and adopted by the people of the state at a referendum election, as the amending clause of the constitution requires. Constitution, art. XIV.

The opinion disposes of this contention on the ground that since the decision of the Supreme Court of the United States in *Germano* v. *Kerner*, 378 U.S. 560, "it can no longer be contended that the area apportionment provisions of article IV, section 6, and its prohibitions against

subsequent legislative change are valid." But this statement does not meet the relator's contention. That contention, if sound, would completely invalidate the 1954 amendment upon the ground that the entire amendment was not submitted to and adopted by the people, as required by the constitution of Illinois. The fact that the Supreme Court of the United States has held a portion of the amendment invalid because it violates the federal constitution has nothing to do with the relator's claim that requirements of the Illinois constitution were not complied with.

This contention of the relator is based upon the statement in *People ex rel. Giannis* v. *Carpentier,* 30 Ill.2d 24, concurred in by only three members of this court, that "(O)nce Senate districts have been established, they are permanently fixed and may not be altered, revised or reallocated except by constitutional amendment." As was pointed out in the dissent in the *Giannis* case, and as is conceded in the majority opinion in this case, no issue concerning the immutability of Senate district boundaries was before the court in the *Giannis* case. The observation as to the constitutional status of Senate districts was unnecessary to the decision and in my opinion the court should not adhere to it.

The language of the 1954 amendment contemplates senatorial, as well as representative, redistricting every ten years: "But if such a General Assembly fails to perform these duties, then another commission, as specified in this Section 8, shall be appointed in like manner, with like duties, and power, and with like effect; and so forth *until a valid senatorial and representative redistricting and reapportionment are secured in this 1950 decade and each decade thereafter. But there can be only one valid senatorial and representative redistricting and reapportionment during a particular decade.*" (Italics supplied.)

If this court were to hold, in accordance with this language, that senatorial districts once established are not immutable, the relator's contention in this case would fail. But the court does not so hold. It leaves the contention unanswered, except as it refers to the legislation which prescribes district boundaries which can be changed only by constutional amendment as "the traditional method of reapportionment." The majority opinion cites no authority whatsoever to support its assumption that legislation which can be altered only by constitutional amendment is a traditional method of reapportionment. None has been cited by the parties, and I am aware of none.

The relator's contention that the 1954 amendment violates the Illinois constitution could easily be answered by adhering to the actual language of the 1954 amendment and repudiating the *Giannis dictum* as to the immutability of Senate districts. But the court now appears to have rejected that course. I see no escape from the conclusion that, if the 1954 amendment meant that Senate districts established without having been published or submitted to a constitutional referendum, could be changed only by constitutional amendment, the relator's contention is sound and the 1954 amendment was not validly adopted under the constitution of Illinois.

Section 8 of the 1954 amendment provides that if the legislature fails to reapportion, a special commission is to be convened to do so and that if it fails one half of the Senate and all of the House must run at large. This provision was one of the most important aspects of the 1954 amendment since it was believed that this would solve the problem of legislative refusal to obey the constitutional mandate to reapportion every ten years. (See *Donovan* v. *Holzman*, 8 Ill.2d 87.) The majority opinion omits any reference to this provision when it enumerates the valid portions of the

amendment. This omission, coupled with the gratuitous observation, "We do not here determine whether, in the absence of a constitutional legislatively determined plan, language in *Towes,* and in *Lucas* v. *44th General Assembly of Colorado,* 84 S. Ct. 1472, 12 L. ed. 2d 632, and related United States Supreme Court decisions, requires us to adopt, simultaneously, provisional reapportionment and redistricting plans for both houses", and the court's retention of jurisdiction, can apparently be explained only on the ground that the majority is getting ready to read section 8 out of the constitution.

Section 8 provides explicitly what is to happen in the event that the General Assembly fails to reapportion. The constitution of Illinois does not contemplate reapportionment by any court, state or federal. There is therefore no practical reason for the retention of jurisdiction of this case. Nor is there any legal basis for the retention of jurisdiction of this case. This is an action for a declaratory judgment, of which this court does not have original jurisdiction. The case is here on appeal from the circuit court of Sangamon County. The jurisdiction of this court ends when it has affirmed or reversed the judgment of the circuit court, or remanded the case to that court for further proceedings. The issues presented in the circuit court concerned only the November 1964 election. They did not at all involve the contingency that the General Assembly might, in 1965, fail to perform its duty. The circuit court decided only the issues that were presented to it, and those are the only issues that are actually before this court.

If the majority were to hold that the provisions of section 8 are still applicable, I would agree on the severability issue. But if, as appears to be the case, they are reading that provision out of the amendment I can not agree that what remains is separable and valid. The majority

correctly states the applicable legal principle as set forth in *People ex rel. Adamowski* v. *Wilson*, 20 Ill.2d 568, but it fails to apply that principle. The test of separability there stated is: "If what remains after the invalid portion is stricken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render the entire section unconstitutional unless it can be said that the General Assembly would not have passed the statute with the invalid portion eliminated." (20 Ill.2d at 582.) The majority opinion completely ignores the second portion of the test.

As I read that opinion the only new provisions embodied in the 1954 amendment that certainly remain valid are those which increase the number of senatorial and representative districts and those which provide that in establishing legislative districts some districts are to be allocated to the city of Chicago, some to the county of Cook outside the city of Chicago, and some to the remaining counties of the state. Certainly the General Assembly in 1953 would not have proposed, nor would the people in 1954 have ratified, a constitutional amendment that made only those relatively insignificant changes in the existing constitution. The suggestion that such an amendment would have been adopted disregards the serious problem that had confronted the state since 1911.

That problem was described in the official explanation of the proposed amendment.

"The Constitution now requires legislative districts to be based solely on population. This has proved unworkable ever since the 1910 census because a valid redistricting would have given the single county of Cook a majority in both houses of the General Assembly. * * *

"Illinois badly needs a legislative redistricting. The present districts stand as they were created half a century ago. As a result, serious inequalities of population have developed, not only as between Cook County and downstate, but even within these major areas of the State. The apportionment amendment tends to assure the people of a constitutional districting because if the General Assembly fails to act, a commission is provided; and if the commission fails to act, legislators will be elected at large." Quoted in *Donovan* v. *Holzman*, 8 Ill.2d 87, 92.

The majority opinion enumerates six purposes sought to be achieved by the 1954 amendment, and describes them as "clearly multiple, independent, and sevarable." Five of these purposes were not new, but were contained in the constitution as it existed before the 1954 amendment. Power to redistrict the House of Representatives on the basis of population, a provision for periodic apportionment, a provision establishing the number of senatorial and representative districts and the number of legislators to be elected from each district, a requirement that legislative districts be formed of contiguous and compact territory, and provisions for the terms of office and the times of election of legislators—all these were contained in article IV of the constitution of 1870 prior to its amendment in 1954.

It simply can not be said that repetition of existing provisions was the purpose of the 1954 amendment. In no way would the solution of the problem that confronted the state have been advanced by an amendment that included only these provisions. The sixth of the purposes of the amendment as described by the majority was new—to "give due regard to the three separate traditional regions of the State." But no one would have regarded that provision, standing alone without the unconstitutional discrimination

it was designed to implement, as of any significance in terms of the problem facing the people.

Although the opinion describes the purposes of the amendment, apart from its unconstitutional discriminatory provisions, as primarily the re-enactment of existing provisions of the 1870 constitution, it omits the provision for automatic redistricting contained in article 8. It has not been suggested by anyone that this provision is invalid. The official explanation quoted above, as well as all the other contemporaneous explanations, emphasize the vital importance of this provision. (*See People ex rel. Giannis* v. *Carpentier*, 30 Ill. 2d 24, 35.) No reason for its omission is suggested. If any part of the 1954 amendment remains valid, that provisions remains.

Mr. JUSTICE HERSHEY joins in this dissent.

APPENDIX E

SUPREME COURT, STATE OF ILLINOIS

Court Convened at 9:30 A.M. Thursday, June 24, 1965

The Court Made The Following Announcements:

Advisement Docket

No. 38848—People ex rel. Robert H. Engle, appellant, vs.
Adv. 49 Otto Kerner, as Governor, etc., et al., appellees. The motion by appellant for an order equalizing representation in both Houses of the General Assembly elected in 1966 and 1970 by weighting Legislators' votes is denied without prejudice.

Motion by William J. Scott, one of appellees, for an order concerning further proceedings should the General Assembly fail to enact a valid reapportionment.

Motion by appellant for an order concerning further proceedings to ensure a valid reapportionment before the close of June 30, 1965.

ORDER

Upon the motion of plaintiff-appellant Robert H. Engle for an order concerning further proceedings in the retained jurisdiction of this cause to ensure a valid reapportionment before June 30, 1965, and upon the motion of defendant-appellee William J. Scott for an order concerning further proceedings in the event the General Assembly fails to enact a valid reapportionment, and the Attorney General having made no response to said motions, and the Court finding it appropriate that an order be entered concerning further proceedings herein;

It Is Hereby Ordered:

1. That in the event the General Assembly of this State fails to enact a reapportionment of the Senate on or before June 30, 1965, each of the parties hereto shall file with the Clerk of this Court on or before July 15, 1965, suggestions, if any, concerning the manner in which the Senate should be reapportioned.

2. That in the event the General Assembly has adopted a plan of reapportionment on or before June 30, 1965, and said plan has been signed into law by the Governor, the Attorney General is directed to file the act or acts constituting such plan with this Court on or before July 12, 1965; all parties shall thereafter file with the Clerk of this Court suggestions, if any, on or before July 15, 1965, as to whether said plan is valid.

3. That regardless of whether the General Assembly enacts a reapportionment plan by June 30, 1965, the Attorney General shall file with the Clerk of this Court on or before July 8, 1965, eight copies of the following: (a) all bills introduced at the current session of the General Assembly concerning reapportionment thereof, and (b) the necessary official 1960 United States Census data for the State of Illinois.

Mr. Justice Schaefer:

In my opinion, this Court has no power under the constitution of Illinois to establish legislative districts. Our courts were established under that constitution to adjudicate controversies between litigants in accordance with standards established by legislation or evolved by the processes of the common law. They were not established to legislate.

The standard of "one vote—one value" required by the Federal Constitution is a standard that can be applied by courts to determine the validity of an existing pattern of legislative districting. But it is a long step from the application of such a standard to the establishment of legislative districts by a court. The temptation to fill the vacuum and to perform the duty that others have failed to perform is strong, particularly when other courts apparently regard themselves as competent to perform the same function. But the temptation does not justify the assumption of a power that does not exist.

So far as the House of Representatives is concerned, the Court now recognizes by its order that section 8 of Article 4 of the Constitution leaves no room for judicial redistricting by any court.

In my opinion, the same constitutional provision leaves no room for this court, or any other court, to assert the power to redistrict the Senate. Section 8 provides that if the General Assembly fails to perform its constitutional duty, the redistricting shall be done by the Commission provided for in that section, which shall file with the Secretary of State its redistricting statement. The section continues: "After such statement is filed, senators and representatives shall be elected according to the statement and the districts therein determined, until a redistricting and reapportionment are thereafter made by the General Assembly as provided in this amendment. If, however, the statement is not filed within four months after the commission is appointed it shall stand discharged. Thereupon, all senators, scheduled for election at the next election for state senators, and all state representatives shall be nominated and elected at the next election from the state

at large. Following such an election at large, the General Assembly at its next regular session shall perform the duties specified in this amendment. But if such a General Assembly fails to perform these duties, then another commission, as specified in this Section 8, shall be appointed in like manner, with like duties, and power, and with like effect; and so forth until a valid senatorial and representative redistricting and reapportionment are secured in this 1950 decade and each decade thereafter. But there can be only one valid senatorial and representative redistricting and reapportionment during a particular decade."

APPENDIX F

IN THE SUPREME COURT OF ILLINOIS

Case No. 38848

THE PEOPLE OF THE STATE OF ILLINOIS on the relation of ROBERT H. ENGLE,

Plaintiff-Appellant,

vs.

OTTO KERNER as Governor and Chairman of the State Electoral Board, et al,

Defendants-Appellees.

ORDER

This matter coming on to be heard on motion of Robert H. Engle, Relator, for leave to be granted to Hugh M. Matchett to file his appearance as attorney for Relator without prejudice to Relator's own appearance *pro se*, and for an order directing the Attorney General of the State of Illinois to furnish him with a copy of each of the reapportionment bills submitted to the 74th General Assembly other than Senate Bill No. 251, said Motion is allowed, and Hugh M. Matchett may file his appearance as attorney for Relator without prejudice to Relator's own appearance *pro se*, and the Attorney General shall furnish him with a copy of each of the bills requested. Relator's suggestion for appointment of *amicus curiae* is continued for consideration by the Court.

Dated: July 13th, 1965

Enter .....

Judge

Objected by a Defendant-Appellee; Denied.

APPENDIX G

IN THE SUPREME COURT OF ILLINOIS

No. 38848

THE PEOPLE OF THE STATE OF ILLINOIS ex rel. ROBERT ENGLE,
Appellant,

vs.

OTTO KERNER, et al.,
Appellees.

ORDER

In response to this court's order of June 24, 1965, the Attorney General of the State of Illinois has filed copies of all Bills introduced in the Seventy-fourth General Assembly concerning reapportionment together with certain official 1960 United States Census data, and the parties have filed suggestions concerning the manner in which the state Senate should be reapportioned.

The court has examined these suggestions and is of the opinion that none of such plans is completely acceptable, because of various reasons including the absence of adequate supporting information relating to the basis on which proposed district population statistics were determined in the City of Chicago where wards were split by district boundaries and outside the City of Chicago where individual townships were split by district boundaries.

Realizing that efforts to compromise the opposing views have heretofore been unsuccessful, the court is nevertheless of the opinion that it would be helpful to the solution of the problem if the parties hereto would make a final effort to accommodate their differences in order that a basically fair and constitutionally valid plan of senatorial representation may be devised.

It is therefore hereby requested that the parties hereto forthwith confer for the purpose of reconciling conflicting views and attempting to present an agreed constitutionally valid plan for reapportionment of the Senate of this state, and file with the Chief Justice of this Court a statement of the results of such conferences on or before August 15, 1965.

Should such efforts be fruitless, the court believes further assistance in the preparation of a plan of senatorial reapportionment is desirable.

It Is Therefore Hereby Ordered that Russell N. Sullivan, Dean of the College of Law, University of Illinois, Phil C. Neal, Dean of the Law School, The University of Chicago, and John Ritchie, Dean of the School of Law of Northwestern University, be and they are hereby appointed amici curiae for the purpose of studying the suggestions, recommendations and maps submitted to the court and such other material as they deem necessary and appropriate and preparing and presenting a suggested division of the State of Illinois into fifty-eight senatorial districts, including maps and legal descriptions thereof, in accordance with the terms of this order and subject to the following directions:

1. That the duties of amici hereunder shall commence subsequent to August 15, 1965, should the parties fail to resolve their differences with a constitutionally valid plan prior thereto.

2. The suggested division shall be so drawn as to provide compact districts of contiguous territory as nearly equal in population as is practicable, and in accordance with the spirit and intent of Reynolds v. Sims, 377 U.S. 533, Roman v. Sincock, 377 U.S. 695, and similar cases.

3. That the three principal political regions designated in sections 6, 7 and 8 of Article IV of the Illinois Con-

stitution, as interpreted by our opinion in this cause. People ex rel. Engle v. Kerner, 32 Ill. 2d 212,) shall be respected.

4. That in so far as practicable, natural, historic, and political subdivision boundaries shall be followed. (Reynolds v. Sims, supra).

5. That no consideration shall be given by amici or the parties hereto to the question of length of senatorial terms since this Court believes it essential to a constitutionally organized Senate that all senators be elected in 1966 under a provisional plan for reasons to be specified in the final opinion herein.

6. That amici curiae are hereby authorized to select and retain such personnel as may be required to carry out the terms of this order and to incur such other reasonable expenses as may be necessary to comply herewith.

7. That amici curiae shall present the results of their efforts, together with all supporting data, for review by this court as soon as feasible.

8. That since reapportionment is fundamentally a legislative task, any plan so devised and adopted by this Court shall be provisional and effective only until July 31, 1967, or such earlier date as a constitutionally valid reapportionment plan shall have been enacted into law by the appropriate governmental agencies, and shall provide for the retention by this court of jurisdiction of this cause.

Entered: July 29th, 1965.

/s/ *Ray L. Klingbiel*
Robert C. Underwood
Harry B. Hershey
R. Solfisberg
Byron A. House
Walter V. Schaefer

APPENDIX H

Docket No. 38848—Agenda 23—January, 1965.

The People *ex rel.* Robert H. Engle, Appellant, v. Otto Kerner, Governor, *et al.*, Appellees.

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

The 74th General Assembly, recently adjourned *sine die,* unfortunately failed in its task of senatorial reapportionment. It therefore becomes necessary for this court, pursuant to our retention of jurisdiction herein, (*People ex rel. Engle* v. *Kerner*, 32 Ill.2d 212) to frame such affirmative relief as is necessary to insure a constitutionally valid election of Illinois senators in 1966.

By our order of June 24, 1965, we directed the parties hereto to submit suggestions for a judicially constructed senatorial reapportionment plan. Pursuant thereto widely divergent proposals were filed. Subsequently, Chief Judge Campbell of the United States District Court for the Northern District of Illinois, which also had jurisdiction of the same problem, (see *Scott* v. *Germano,* —— U.S. ——, 14 L. ed. 2d 477, 85 S. Ct. 1525) with our knowledge and approval undertook pretrial conferences in an attempt to promote agreement upon the unresolved questions. By order dated July 29, 1965, we appointed Deans Russell N. Sullivan of the University of Illinois College of Law, John Ritchie of the Northwestern University School of Law, and Phil C. Neal of the University of Chicago Law School as *amici curiae* for the purpose of preparing and submitting for our approval a reapportionment plan, and simultaneously allowed the opposing parties a final opportunity to resolve existing senatorial reapportionment disputes and

submit to this court an equitable and constitutionally valid proposal. Although complete agreement was not reached, several proposed reapportionment plans, together with supporting population data, have been submitted and examined by both this court and the Federal district court. From these proposed plans a provisional reapportionment scheme, based principally upon the areas of preliminary agreement, has been prepared.

We believe this plan to be just, equitable and constitutionally valid, representing a fair compromise between the divergent proposals originally submitted by the parties. Accordingly, we, together with the Federal district court, on August 25, 1965, indicated our approval of such plan. As a consequence, all Illinois senators shall be elected in 1966 from districts described by the provisional plan, a copy of which is attached as an appendix hereto, including legal descriptions and maps.

The plan adopted clearly complies with the "one man-one vote" principle, for the largest district, No. 58, contains (based upon 1960 census statistics) 187,247 inhabitants, thereby deviating from the hypothetical perfectly populated district or "norm" (173,813) by only 7.7%. The smallest district, No. 44, contains 161,586 people and deviates from the norm by 7.0%. It is well settled that mathematical nicety is not constitutionally required in devising reapportionment schemes, and that districts not substantially diluting the equal population principle are valid. (*Reynolds* v. *Sims*, 377 U.S. 533, 12 L. ed. 2d 506, 84 S. Ct. 1362.) We believe the minor deviations from the population norm, made necessary by a desire to preserve the integrity of existing political subdivisions, are embraced within constitutionally permissible limits. We also recognize that this provisional plan may be somewhat less

than ideal in terms of compactness and contiguity, but, under existing circumstances, we believe that the present plan represents a reasonable resolution of the problems involved.

We have previously indicated by our order of July 29, 1965, that all 58 senatorial seats are to be filled in the 1966 election. This may properly be done, as existing *de facto* office holders have no vested tenure in office as such. *Hughes* v. *WMCA, Inc.*, 379 U.S. 694, 85 S. Ct. 713 (see factual statement in dissenting opinion); *Davis* v. *Mann*, 238 F. Supp. 458, 460 (E.D. Va.), affirmed 379 U.S. 694, 85 S. Ct. 713; *Parsons* v. *Buckley*, 379 U.S. 359, 13 L. ed. 2d 352, 85 S. Ct. 503.

The Illinois constitution (art. IV, sec. 6) provides for staggering the terms of senators. We have held this provision to be valid (*People ex rel. Engle* v. *Kerner*, 32 Ill.2d 212,) and in any legislatively devised reapportionment scheme, the principle would of course be mandatory. However, the plan adopted here is clearly provisional and temporary in nature, made necessary only by legislative nonfeasance. To judicially provide for staggered terms in a temporary redistricting scheme would unduly and unnecessarily encroach upon the legislative domain. We hold, therefore, that all 58 senators shall be elected in 1966 and thereafter for identical four-year terms until such time as 1970 census figures become available for legislative action.

Reapportionment is a legislative responsibility, and certain Illinois constitutional provisions have been held incompatable with Federal constitutional requirements. The desirability of a new constitutional amendment is apparent and we commend this subject to the consideration of the General Assembly.

Since a provisional plan has been adopted, the services of *amici curiae* appointed by order of July 29, 1965, are no longer necessary. They are accordingly hereby discharged, with instructions to present to the clerk of this court statements of reasonable expenses, if any, heretofore incurred by them as *amici*. We express our appreciation to Deans Sullivan, Ritchie, and Neal, and commend their willingness to serve this court and the public in these sensitive and troublesome areas of legislative reapportionment.

Provisional Senatorial Reapportionment adopted.

APPENDIX

Population Data for Cook County Senate Districts Outside the City of Chicago

District No.	*Population*	*Deviation from Norm*
1	169,103	—2.7%
2	163,871	—5.8%
3	172,069	—1.0%
4	178,204	+2.5%
5	185.014	+6.4%
6	175,943	+1.2%
7	176,647	+1.6%
8	176,368	+1.5%
9	182,865	+5.2%

Legal Descriptions for Cook County Senate Districts Outside the City of Chicago

District 1: New Trier Township, Evanston Township, that part of Northfield Township lying to the south and east of a line described as follows: beginning at the point where Voltz Road extended intercepts the eastern township boundary proceed west along the center of Voltz Road to

the center of the intersection with the Chicago and North Western Railway right-of-way then in a southerly and westerly direction along the North Western Railway right-of-way to the point where it intercepts the southern township boundary, that part of Niles Township that lies to the north and east of a line described as follows: beginning at the intersection of Crawford Avenue and the northern township boundary proceed south along the center of Crawford Avenue to the center of the intersection with Dempster Street then east along the center of Dempster Street to the eastern township boundary, all in Cook County.

District 2: The townships of Leyden, Norwood Park, River Forest, and that part of Oak Park Township lying north of Madison Street, all in Cook County.

District 3: The townships of Barrington, Elk Grove, Hanover, Palatine, Shaumberg, and Wheeling; that part of Northfield Township lying to the north and west of a line described as follows: beginning at the point where Voltz Road extended intercepts the eastern township boundary proceed west along the center of Voltz Road to the center of the intersection with the Chicago and North Western Railway right-of-way then proceed in a southerly and westerly direction along the right-of-way to the point where the Chicago and North Western right-of-way intercepts the south township boundary, that part of Maine Township lying north and west of a line described as follows: beginning at the western boundary of Maine Township at Thacker Street proceed east on Thacker Street to the Chicago and North Western Railway right-of-way then northerly along the North Western Railway right-of-way to the Des Plaines River, then northerly along the Des Plaines River to the northern boundary of Maine Township, all in Cook County.

District 4: Maine Township, excepting that portion which lies to the north and west of a line described as follows: beginning at the western boundary of Maine Township proceed east along the center of Thacker Street to the Chicago and North Western Railway right-of-way then northeasterly along the North Western right-of-way to the Des Plaines River, then northerly along the Des Plaines River to the northern boundary of Maine Township, and Niles Township excepting that part that lies to the north and east of a line described as follows: beginning at the intersection of Crawford Avenue and the northern township boundary proceed south along the center of Crawford Avenue to the center of the intersection with Dempster Street then east along the center of Dempster Street to the eastern township boundary, all in Cook County.

District 5: That part of Oak Park Township that lies south of Madison Street, all of Proviso Township excepting that portion that lies to the south and east of a line described as follows: beginning at the point where the east township boundary is intercepted by Cermak Road proceed west along the center of Cermak Road to La Grange Road then south on La Grange Road to the township boundary, and that part of Berwyn Township north of Cermak Road, all in Cook County.

District 6: Calumet Township, Worth Township, that part of Stickney Township that lies south of Fifty-First Street, that part of Thornton Township that lies to the north and west of a line described as follows: beginning at the center of the intersection of the Calumet Expressway with the north township boundary proceed south along the Calumet Expressway to the center of the intersection with Sibley Boulevard (147th Street) then west on Sibley Boulevard to the center of the intersection with the Illinois

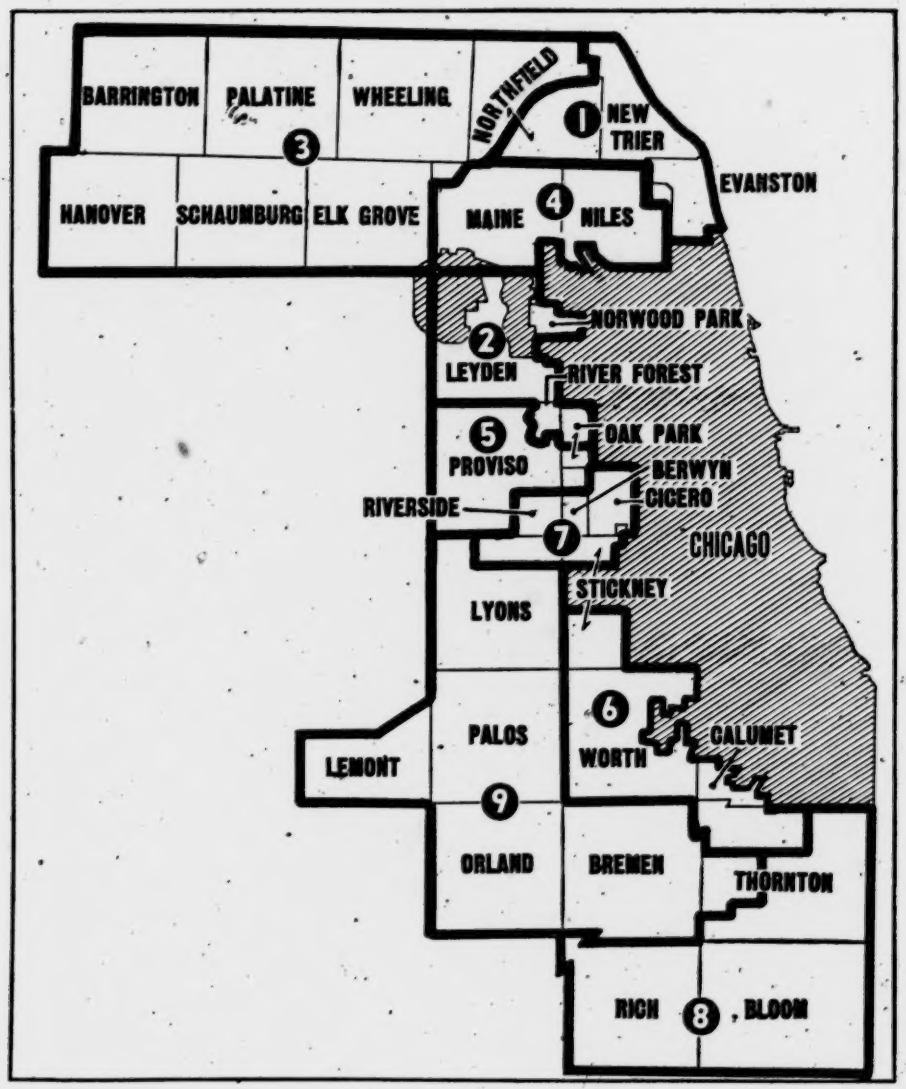
Central Railroad right-of-way then north along the right-of-way to the center of the intersection with 143rd Street (146th Street) then west along 143rd Street (146th Street) to the intersection with the western township boundary, all in Cook County.

District 7: The townships of Cicero and Riverside, that part of Berwyn Township south of Cermak Road, that part of Stickney Township that lies north of Fifty-First Street, that part of Proviso Township that lies south and east of a line described as follows: beginning at the southern boundary of Proviso Township proceed north along the center of La Grange Road to the center of the intersection with Cermak Road then east along the center of Cermak Road to the eastern boundary of the township, that part of Lyons Township lying north and east of a line described as follows: beginning at the intersection of Gilbert Avenue and the northern township boundary proceed south along the center of Gilbert Avenue to the center of the intersection with Forty-Seventh Street then east along the center of Forty-Seventh Street to the township boundary, all in Cook County.

District 8: Bloom Township, Rich Township, and that part of Thornton Township to the south and east of a line described as follows: beginning at the north township boundary proceed south along the Calumet Expressway to the point where it intercepts Sibley Boulevard then west along the center of Sibley Boulevard to the center of the intersection with Indiana Avenue (State Street) then south along the center of Indiana Avenue (State Street) to the center of the intersection with 167th Street then west along the center of 167th Street to the center of the intersection with Halsted Street then south along the center of Halsted

Street to the center of the intersection with the Tri-State Tollway then west along the Tri-State Tollway to the western township boundary, all in Cook County.

District 9: The townships of Bremen, Lemont, Orland, Palos, that part of Lyons Township that lies to the south and west of a line described as follows: beginning at the northern township boundary proceed south along the center of Gilbert Avenue to the center of the intersection with Forty-Seventh Street then east along the center of Forty-Seventh Street to the eastern township boundary, that part of Thornton Township that lies to the west of a line described as follows: beginning at the western boundary of Thornton Township proceed east on 143rd Street (146th Street) to the center of the intersection with the Illinois Central Railroad right-of-way then southwesterly along the right-of-way to the center of Sibley Boulevard then east along the center of Sibley Boulevard to Indiana Avenue (State Street) then south along the center of Indiana Avenue to the center of the intersection with 167th Street then west along the center of 167th Street to the center of the intersection with Halsted Street then south along the center of Halsted Street to the center of the intersection with the Tri-State Tollway then west on the Tri-State Tollway to the township boundary, all in Cook County.



Cook County Senate Districts Outside the City of Chicago

POPULATION DATA FOR CITY OF CHICAGO
SENATE DISTRICTS

District No.	*Population*	*Deviation from Norm (173,813)*
10	170,714	—1.8%
11	169,887	—2.3%
12	169.470	—2.6%
13	168,560	—3.1%
14	168,550	—3.1%
15	169,444	—2.6%
16	168,846	—2 9%
17	170,101	—2.2%
18	168,647	—3.1%
19	169,133	—2.8%
20	170,950	—1.7%
21	168,635	—3.1%
22	168,789	—3.0%
23	169,739	—2.4%
24	169,152	—2.8%
25	169,716	—2.4%
26	168,037	—3.4%
27	167,999	—3.5%
28	170,225	—2.1%
29	170,036	—2.2%
30	168,935	—2.9%

LEGAL DESCRIPTIONS OF CITY OF CHICAGO
SENATE DISTRICTS

District 10: The Forty-Ninth Ward, that part of the Forty-Seventh Ward lying to the north of Sunnyside Avenue and east of Western Avenue, that part of the Forty-Eighth Ward lying to the north of Berwyn Avenue, and that part of the Fiftieth Ward lying to the north and east of a line described as follows: beginning at the eastern

boundary of the Fiftieth Ward and its intersection with Berwyn Avenue, west on Berwyn Avenue to Western Avenue, north on Western Avenue to Pratt Avenue, west on Pratt Avenue to its intersection with the western boundary of the Fiftieth Ward, all in the city of Chicago.

District 11: The Forty-Sixth Ward, that part of the Forty-Fourth Ward lying to the north of a line described as follows: beginning at the western boundary of the Forty-Fourth Ward and its intersection with Wellington Avenue, east on Wellington Avenue to Racine Avenue, south on Racine Avenue to George Street, east on George Street to Halsted Street, south on Halsted Street to Diversey Parkway, east on Diversey Parkway to its intersection with Lake Michigan, and that part of the Forty-Eighth Ward lying to the south of Berwyn Avenue, all in the city of Chicago.

District 12: The Forty-Second Ward, the Forty-Third Ward, and that part of the Forty-Fourth Ward lying to the south of a line described as follows: beginning at the western boundary of the Forty-Fourth Ward and its intersection with Wellington Avenue, east on Wellington Avenue to Racine Avenue, south on Racine Avenue to George Street, east on George Street to Halsted Street, south on Halsted Street to Diversey Parkway, east on Diversey Parkway to its intersection with Lake Michigan, all in the city of Chicago.

District 13: The Thirty-Third Ward, that part of the Fortieth Ward lying to the east of a line described as follows: beginning at the northern boundary of the Fortieth Ward and its intersection with the North Shore Channel, southeast along the channel to its intersection with Lawrence Avenue west on Lawrence Avenue to Albany

Avenue, south on Albany Avenue to its intersection with the southern boundary of the Fortieth Ward, that part of the Forty-Seventh Ward lying to the west and south of a line described as follows: beginning at the northern boundary of the Forty-Seventh Ward and its intersection with Western Avenue, south on Western Avenue to Sunnyside Avenue, east on Sunnyside Avenue to its intersection with the eastern boundary of the Forty-Seventh Ward, and that part of the Fiftieth Ward lying to the south of Pratt Avenue and west of Western Avenue, all in the city of Chicago.

District 14: The Thirty-Fourth Ward, that part of the Thirty-Fifth Ward lying to the east of Cicero Avenue, that part of the Thirty-Sixth Ward lying to the east of the Chicago and North Western Railway right-of-way at Kenton Avenue and north of the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way at Blomoingdale Avenue, that part of the Thirty-Nine Ward bounded by a line described as follows: beginning at the eastern boundary of the Thirty-Ninth Ward and its intersection with Montrose Avenue, west on Montrose Avenue to Elston Avenue, northwest on Elston Avenue to Leland Avenue, west on Leland Avenue to Kostner Avenue, south on Kostner Avenue to Montrose Avenue, west on Montrose Avenue to its intersection with the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way, southeast along the railroad right-of-way to its intersection with the Chicago and North Western Railway right-of-way at Kenton Avenue, south along the railroad right-of-way to its intersection with Addison Street, east on Addison Street to Central Park Avenue, north on Central Park Avenue to the point of beginning at Montrose Avenue, and that part of the Fortieth Ward bounded by a line described as follows: beginning at the western boun-

dary of the Fortieth Ward and its intersection with Lawrence Avenue, east on Lawrence Avenue to Albany Avenue, south on Albany Avenue to Grace Street, west on Grace Street to Central Park Avenue, north on Central Park Avenue to the point of beginning at Lawrence Avenue, all in the city of Chicago.

District 15: That part of the Thirty-Fifth Ward lying to the west of Cicero Avenue, that part of the Thirty-Sixth Ward lying to the west of a line described as follows: beginning at the northern boundary of the Thirty-Sixth Ward and its intersection with Long Avenue, south on Long Avenue to Fullerton Avenue, west on Fullerton to Central Avenue, south on Central Avenue to its intersection with the southern boundary of the Thirty-Sixth Ward, that part of the Thirty-Eighth Ward lying to the east of a line described as follows: beginning at the northern boundary of the Thirty-Eighth Ward and its intersection with Central Avenue, south on Central Avenue to Newport Avenue, west on Newport Avenue to Major Street, south on Major Street to Belmont Avenue, west on Belmont Avenue to Austin Avenue, south on Austin Avenue to the southern boundary of the Thirty-Eighth Ward, that part of the Thirty-Ninth Ward bounded by a line described as follows: beginning at the northern boundary of the Thirty-Ninth Ward and its intersection with Pulaski Road, south on Pulaski Road to Foster Avenue, east on Foster Avenue to Central Park Avenue, south on Central Park Avenue to Montrose Avenue, west on Montrose Avenue to Elston Avenue, northwest on Elston Avenue to Leland Avenue, west on Leland Avenue to Kostner Avenue, south on Kostner Avenue to Montrose Avenue, west on Montrose Avenue to its intersection with the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way, southeast along the railroad right-o-way to its intersection with the Chicago and North Western Rail-

way right-of-way at Kenton Avenue, south along the railroad right-of-way to its intersection with Addison Street, west on Addison Street to Lavergne Avenue, north on Lavergne Avenue to Irving Park Road, east on Irving Park Road to Cicero Avenue, north on Cicero Avenue to Devon Avenue, east on Devon Avenue to the point of beginning at Pulaski Road, that part of the Fortieth Ward lying to the north of Lawrence Avenue and west of the North Shore Channel, and that part of the Forty-Fifth Ward bounded by a line described as follows: beginning at the northern boundary of the Forty-Fifth Ward and its intersection with Cicero Avenue, south on Cicero Avenue to Irving Park Road, west on Irving Park Road to Lavergne Avenue south on Lavergne Avenue to Addison Street, west on Addison Street to Lockwood Avenue, north on Lockwood Avenue to Berteau Avenue, west on Berteau Avenue to Central Avenue, north on Central Avenue to Lawrence Avenue, east on Lawrence Avenue to Lavergne Avenue, north on Lavergne Avenue to Winnemac Avenue, west on Winnemac Avenue to Leclaire Avenue, north on Leclaire Avenue to its intersection with the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way, northwest along the railroad right-of-way to its intersection with the western boundary of the Forty-Fifth Ward, all in the city of Chicago.

District 16: The Forty-First Ward, that part of the Thirty-Eighth Ward lying to the west of a line described as follows: beginning at the northern boundary of the Thirty-Eighth Ward and its intersection with Central Avenue, south on Central Avenue to Newport Avenue, west on Newport Avenue to Major Street, south on Major Street to Belmont Avenue, west on Belmont Avenue to Austin Avenue, south on Austin Avenue to its intersection with the southern boundary of the Thirty-Eighth Ward, and that

part of the Forty-Fifth Ward bounded by a line described as follows: beginning at the western boundary of the Forty-Fifth Ward and its intersection with Foster Avenue, east on Foster Avenue to Central Avenue, north on Central Avenue to its intersection with the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way, southeast along the railroad right-of-way to its intersection with Leclaire Avenue, south on Leclaire Avenue to Winnemac Avenue, east on Winnemac Avenue to Lavergne Avenue, south on Lavergne Avenue to Lawrence Avenue, west on Lawrence Avenue to Central Avenue, south Central Avenue to Newport Avenue, west on Newport Avenue to Narragansett Avenue, north on Narragansett Avenue to Irving Park Road, west on Irving Park Road to Harlem Avenue, north on Harlem Avenue to Forest Preserve Road, northeast on Forest Preserve Road to Montrose Avenue, east on Montrose Avenue to Narragansett Avenue, north on Narragansett Avenue to Gunnison Street, west on Gunnison Street to Nagle Avenue, north on Nagle Avenue to the point of beginning at Foster Avenue, all in the city of Chicago.

District 17: The Thirty-First Ward, that part of the Twenty-Sixth Ward lying to the north of Chicago Avenue and west of Damen Avenue, that part of the Thirtieth Ward lying to the north of Chicago Avenue, that part of the Thirty-Second Ward bounded by a line described as follows: beginning at the northern boundary of the Thirty-Second Ward and its intersection with Milwaukee Avenue, southeast on Milwaukee Avenue to Armitage Avenue, west on Armitage Avenue to Rockwell Street, south on Rockwell Street to North Avenue, east on North Avenue to Western Avenue, south on Western Avenue to Division Street, east on Division Street to Wolcott Avenue, north on Wolcott Avenue to Beach Street, east on Beach Street to Ashland

Avenue, north on Ashland Avenue to North Avenue, east on North Avenue to its intersection with the north branch of the Chicago River, northwest along the river to its intersection with Fullerton Avenue, west on Fullerton Avenue to the point of beginning at Milwaukee Avenue, and that part of the Thirty-Sixth Ward bounded by a line described as follows: beginning at the southern boundary of the Thirty-Sixth Ward and its intersection with Central Avenue, north on Central Avenue to Fullerton Avenue, east on Fullerton Avenue to its intersection with the Chicago and North Western Railway right-of-way at Kenton Avenue, south along the railroad right-of-way to its intersection with the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way at Bloomingdale Avenue, east along the railroad right-of-way to its intersection with Kedvale Avenue, south Kedvale Avenue to North Avenue, west on North Avenue to the point of beginning at Central Avenue, all in the city of Chicago.

District 18: The Thirty-Seventh Ward, that part of the Twenty-Eighth Ward bounded by a line described as follows: beginning at the northern boundary of the Twenty-Eighth Ward and its intersection with Homan Avenue, south on Homan Avenue to its intersection with the Chicago and North Western Railway right-of-way, west along the railroad right-of-way to its intersection with Hamlin Avenue, south on Hamlin Avenue to Madison Street, west on Madison Street to Pulaski Road, south on Pulaski Road to Adams Street, west on Adams Street to Kildare Avenue, south on Kildare Avenue to Van Buren Street, west on Van Buren Street to its intersection with the Belt Railway right-of-way at Kenton Avenue, north along the railroad right-of-way to its intersection with Chicago Avenue, east on Chicago Avenue to the point of beginning at Homan Avenue, that part of the Twenty-Ninth Ward bounded by a

line described as follows: beginning at the western boundary of the Twenty-Ninth Ward and its intersection with Harrison Street, east on Harrison Street to Hamlin Avenue, south on Hamlin Avenue to Taylor Street, east on Taylor Street to Sacramento Boulevard, north on Sacramento Boulevard to Madison Street, west on Madison Street to Spaulding Avenue, south on Spaulding Avenue to Adams Street, west on Adams Street to Kildare Avenue, south on Kildare Avenue to the point of beginning at Harrison Street, and that part of the Thirtieth Ward lying to the south of Chicago Avenue, all in the city of Chicago.

District 19: The Twenty-Seventh Ward, that part of the First Ward lying to the north of Harrison Street, that part of the Twenty-Sixth Ward bounded by a line described as follows: beginning at the western boundary of the Twenty-Sixth Ward and its intersection with Chicago Avenue, east on Chicago Avenue to Damen Avenue, north on Damen Avenue to Division Street, east on Division Street to its intersection with the north branch of the Chicago River, southeast along the river to its intersection with Kinzie Street, west on Kinzie Street to Ashland Avenue, south on Ashland Avenue to Washington Boulevard, west on Washington Boulevard to Western Avenue, north on Western Avenue to the point of beginning at Chicago Avenue, that part of the Twenty-Eighth Ward bounded by a line described as follows: beginning at the northern boundary of the Twenty-Eighth Ward and its intersection with Homan Avenue, south on Homan Avenue to its intersection with the Chicago and North Western Railway right-of-way, west along the railroad right-of-way to its intersection with Hamlin Avenue, south on Hamlin Avenue to Madison Street, west on Madison Street to Pulaski Road, south on

Pulaski Road to Adams Street, east on Adams Street to Spaulding Avenue, north on Spaulding Avenue to Washington Boulevard, east on Washington Boulevard to Western Avenue, north on Western Avenue to Chicago Avenue, west on Chicago Avenue to the point of beginning at Homan Avenue, and that part of the Thirty-Second Ward bounded by line described as follows: beginning at the southern boundary of the Thirty-Second Ward and its intersection with Wolcott Avenue, north on Wolcott Avenue to Beach Street, east on Beach Street to Ashland Avenue, north on Ashland Avenue to North Avenue, east on North Avenue to its intersection with the north branch of the Chicago River, south along the river to its intersection with Division Street, west on Division Street to the point of beginning at Wolcott Avenue, all in the city of Chicago.

District 20: The Twenty-Fifth Ward, that part of the First Ward lying to the south of Harrison Street, and that part of the Twenty-Second Ward lying to the east of Kedzie Avenue, all in the city of Chicago.

District 21: The Twenty-Fourth Ward, that part of the Twenty-Second Ward lying to the west of Kedzie Avenue, that part of the Twenty-Third Ward lying to the north of 47th Street, and that part of the Twenty-Ninth Ward lying to the south of Harrison Street and west of Hamlin Avenue, all in the city of Chicago.

District 22: The Second Ward, that part of the Third Ward lying to the north and east of a line described as follows: beginning at the western boundary of the Third Ward and its intersection with 49th Street, east on 49th Street to South Parkway, south on South Parkway to 51st Street, east on 51st Street to its intersection with the eastern boundary of the Third Ward, and that part of the Fourth Ward lying to the north and east of a line described as

follows: beginning at the eastern boundary of the Fourth Ward and its intersection with 46th Street, east on 46th Street to Woodlawn Avenue, south on Woodlawn Avenue to 47th Street, east on 47th Street to its intersection with Lake Michigan, all in the city of Chicago.

District 23: The Eleventh Ward, the Fourteenth Ward, that part of the Twelfth Ward lying to the north and east of a line described as follows: beginning at the eastern boundary of the Twelfth Ward and its intersection with 47th Street, west on 47th Street to Rockwell Street, north on Rockwell Street to Pershing Road, west on Pershing Road to its intersection with the western boundary of the Twelfth Ward, that part of the Sixteenth Ward lying to the north of 59th Street, and that part of the Twentieth Ward lying to the north of 59th Street and west of Wentworth Avenue, all in the city of Chicago.

District 24: The Fifth Ward, that part of the Fourth Ward lying to the south and west of a line described as follows: beginning at the western boundary of the Fourth Ward and its intersection with 46th Street, east on 46th Street to Woodlawn Avenue, south on Woodlawn Avenue to 47th Street, east on 47th Street to its intersection with Lake Michigan, that part of the Seventh Ward lying to the north of 73rd Street, and that part of the Twentieth Ward bounded by a line described as follows: beginning at the northern boundary of the Twentieth Ward and its intersection with South Parkway, south on South Parkway to 55th Street, west on 55th Street to Prairie Avenue, south on Prairie Avenue to 63rd Street, east on 63rd Street to Cottage Grove Avenue, north on Cottage Grove Avenue to 51st Street, west on 51st Street to the point of beginning at South Parkway, all in the city of Chicago.

District 25: That part of the Twelfth Ward lying to the south and west of a line described as follows: beginning at the eastern boundary of the Twelfth Ward and its intersection with 47th Street, west on 47th Street to Rockwell Street, north on Rockwell Street to Pershing Road, west on Pershing Road to its intersection with the western boundary of the Twelfth Ward, that part of the Thirteenth Ward lying to the east of Western Avenue, that part of the Fifteenth Ward lying to the north and east of a line described as follows: beginning at the southern boundary of the Fifteenth Ward and its intersection with Western Avenue, north on Western Avenue to 63rd Street, west on 63rd Street to California Avenue, north on California Avenue to 55th Street, west on 55th Street to its intersection with the western boundary of the Fifteenth Ward, that part of the Sixteenth Ward bounded by a line described as follows: beginning at the northern boundary of the Sixteenth Ward and its intersection with Ashland Avenue, south on Ashland Avenue to 71st Street, east on 71st Street to Morgan Street, south on Morgan Street to 75th Street, west on 75th Street to Ashland Avenue, north on Ashland Avenue to Marquette Road, west on Marquette Road to Damen Avenue, north on Damen Avenue to 59th Street, east on 59th Street to the point of beginning at Ashland Avenue, that part of the Eighteenth Ward lying to the east of Western Avenue, that part of the Nineteenth Ward bounded by a line described as follows: beginning at the northern boundary of the Nineteenth Ward and its intersection with Western Avenue, south on Western Avenue to 97th Street, east on 97th Street to Oakley Avenue, north on Oakley Avenue to 87th Street, west on 87th Street to the point of beginning at Western Avenue, and that part of the Twenty-Third Ward bounded by a line described as follows: beginning at the eastern boundary of the Twenty-Third Ward and its

intersection with 47th Street, west on 47th Street to Laramie Avenue, south on Laramie Avenue to 51st Street, west on 51st Street to Central Avenue, south on Central Avenue to 55th Street, east on 55th Street to Pulaski Road, north on Pulaski Road to the point of beginning at 47th Street, all in city of Chicago.

District 26: That part of the Third Ward lying to the south of 49th Street and west of South Parkway, that part of the Sixth Ward bounded by a line described as follows: beginning at the western boundary of the Sixth Ward and its intersection with Marquette Road, east on Marquette Road to South Park Avenue, south on South Park Avenue to 71st Street, east on 71st Street to Cottage Grove Avenue, south on Cottage Grove Avenue to 75th Street, west on 75th Street to State Street, north on State Street to the point of beginning at Marquette Road, that part of the Sixteenth Ward bounded by a line described as follows: beginning at the eastern boundary of the Sixteenth Ward and its intersection with 59th Street, west on 59th Street to Ashland Avenue, south on Ashland Avenue to 71st Street, east on 71st Street to Morgan Street, north on Morgan Street to 63rd Street, east on 63rd Street to Halsted Street, north on Halsted Street to the point of beginning at 59th Street, that part of the Seventeenth Ward lying to the north of a line described as follows: beginning at the western boundary of the Seventeenth Ward and its intersection with 76th Street, east on 76th Street to Wallace Street, north on Wallace Street to 75th Street, east on 75th Street to its intersection with the eastern boundary of the Seventeenth Ward and that part of the Twentieth Ward bounded by a line described as follows: beginning at the northern boundary of the Twentieth Ward and its intersection with South Parkway, south on South Parkway to 55th Street, west on 55th Street to Prairie Avenue,

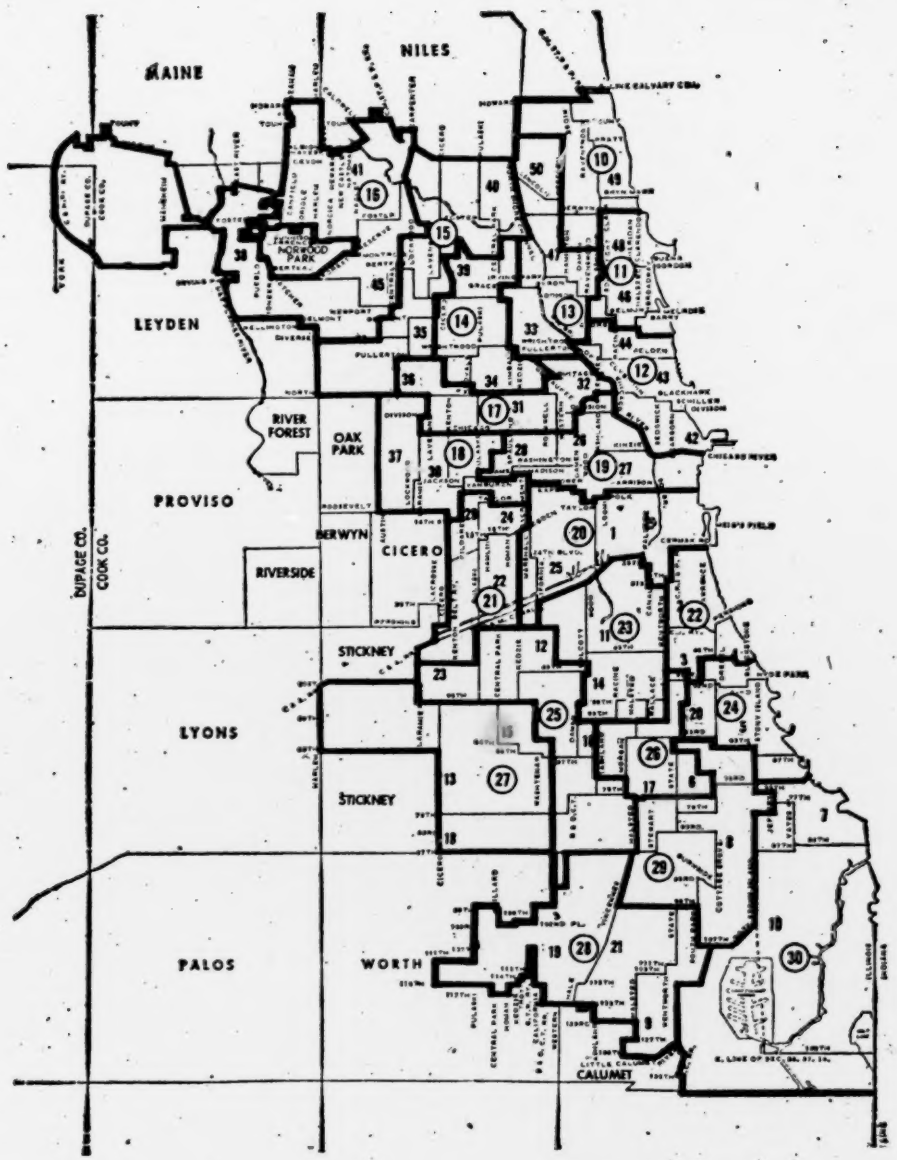
south on Prairie Avenue to 63rd Street, west on 63rd Street to Halsted Street, north on Halsted Street to 59th Street, east on 59th Street to Wentworth Avenue, north on Wentworth Avenue to 51st Street, east on 51st Street to the point of beginning at South Parkway, all in the city of Chicago.

District 27: That part of the Thirteenth Ward lying to the west of Western Avenue, that part of the Fifteenth Ward lying to the south and west of a line described as follows: beginning at the southern boundary of the Fifteenth Ward and its interception with Western Avenue, north on Western Avenue to 63rd Street, west on 63rd Street to California Avenue, north on California Avenue to 55th Street, west on 55th Street to its intersection with the western boundary of the Fifteenth Ward, that part of the Eighteenth Ward lying to the west of Western Avenue, and that part of the Twenty-Third Ward lying to the west and south of a line described as follows: beginning at the eastern boundary of the Twenty-Third Ward and its intersection with 55th Street, west on 55th Street to Central Avenue, north on Central Avenue to its intersection with the northern boundary of the Twenty-Third Ward, all in the city of Chicago.

District 28: That part of the Ninth Ward lying to the west of a line described as follows: beginning at the northern boundary of the Ninth Ward and its intersection with South Park Avenue, south on South Park Avenue to 107th Street, east on 107th Street to Cottage Grove Avenue, southwest on Cottage Grove Avenue to 115th Street, west on 115th Street to State Street, south on State Sreet to its intersection with the southern boundary of the Ninth Ward, that part of the Nineteenth Ward lying to the south and east of a line described as follows: beginning at the eastern

boundary of the Nineteenth Ward and its intersection with 87th Street, west on 87th Street to Oakley Avenue, south on Oakley Avenue to 97th Street, west on 97th Street as extended, and that part of the Twenty-First Ward lying to the south of 99th Street, all in the city of Chicago.

District 29: That part of the Sixth Ward bounded by a line described as follows: beginning at the northern boundary of the Sixth Ward and its intersection with Stony Island Avenue, south on Stony Island Avenue to 73rd Street, west on 73rd Street to Cottage Grove Avenue, south on Cottage Grove Avenue to 79th Street, west on 79th Street to State Street, north on State Street to 75th Street, east on 75th Street to Cottage Grove Avenue, north on Cottage Grove Avenue to 71st Street, west on 71st Street to South Park Avenue, north on South Park Avenue to Marquette Road, west on Marquette Road to State Street, north on State Street to 63rd Street, east on 63rd Street to Cottage Grove Avenue, south on Cottage Grove Avenue to 65th Street, east on 65th Street to the point of beginning at Stony Island Avenue, that part of the Eighth Ward lying to the west of a line described as follows: beginning at the northern boundary of the Eighth Ward and its intersection with Jeffery Avenue, south on Jeffery Avenue to 79th Street, west on 79th Street to Stony Island Avenue, south on Stony Island Avenue to its intersection with the southern boundary of the Eighth Ward, that part of the Seventeenth Ward lying to the south of a line described as follows: beginning at the western boundary of the Seventeenth Ward and its intersection with 76th Street, east on 76th Street to Wallace Avenue, north on Wallace Avenue to 75th Street, east on 75th Street to its intersection with the eastern boundary of the Seventeenth Ward, and that part of the Twenty-First Ward lying to the north of 99th Street, all in the city of Chicago.



CITY OF CHICAGO. SENATE DISTRICTS

District 30: The Tenth Ward, that part of the Seventh Ward lying to the south of 73rd Street, that part of the Eighth Ward lying to the east of a line described as follows: beginning at the northern boundary of the Eighth Ward and its intersection with Jeffers Avenue, south on Jeffery Avenue to 79th Street, west on 79th Street to Stony Island Avenue, south on Stony Island Avenue to its intersection with the southern boundary of the Eighth Ward, and that part of the Ninth Ward lying to the east and south of a line described as follows: beginning at the northern boundary of the Ninth Ward and its intersection with Doty Avenue, southwest on Doty Avenue to 107th Street, west on 107th Street to Cottage Grove Avenue, southwest on Cottage Grove Avenue to 115th Street, west on 115th Street to State Street, south on State Street to its intersection with the southern boundary of the Ninth Ward, all in the city of Chicago.

POPULATION DATA FOR SENATE DISTRICTS OUTSIDE COOK COUNTY

District No.	*Population*	*Deviation from Norm (173,813)*
31	181,876	+4.6%
32	176,102	+1.3%
33	170,644	—1.8%
34	176,319	+1.4%
35	185,528	+6.7%
36	181,957	+4.6%
37	177,734	+2.3%
38	180,516	+3.9%
39	174,452	+0.4%
40	178,292	+2.6%
41	174,682	+0.5%
42	176,457	+1.5%
43	176,377	+1.5%

44	161,586	—7.0%
45	184,540	+6.2%
46	172,689	—0.8%
47	167,069	—3.7%
48	175,928	+1.4%
49	183,110	+5.3%
50	178,868	+2.9%
51	175,017	+0.7%
52	173,236	—0.2%
53	180,428	+3.9%
54	180,683	+4.0%
55	171,271	—1.5%
56	173,436	—0.1%
57	180,335	+3.8%
58	187,247	+7.7%

LEGAL DESCRIPTIONS FOR SENATE DISTRICTS OTHER THAN COOK COUNTY

District 31: The townships of Antioch, Benton, Lake Villa, Libertyville, Newport, Shields, Warren, Waukegan, and Zion in Lake County.

District 32: The townships of Avon, Cuba, Deerfield, Ela, Fremont, Grant, Vernon, Wauconda, and West Deerfield in Lake County and the townships of Algonquin, Burton, Door, Greenwood, Hebron, McHenry, Nunda and Richmond in McHenry County.

District 33: The counties of Boone and DeKalb, the townships of Big Rock, Blackberry, Burlington, Campton, Dunde, Hampshire, Kaneville, Plato, Rutland, Sugar Grove and Virgil in Kane County, the townships of Big Grove, Fox and Little Rock in Kendall County, the townships of Alden, Chemung, Coral, Dunham, Grafton, Hartland, Marengo, Riley, and Seneca in McHenry County and the

townships of Burrit, Durand, Harlem, Harrison, Laona, Owen, Pecatonica, Rockton, Roscoe, and Shirland in Winnebago County.

District 34: The townships of Cherry Valley, Rockford, Seward, and Winnebago in Winnebago County.

District 35: The counties of Carroll, JoDaviess, Ogle, Stephenson and Whiteside.

District 36: The counties of Bureau, Henry, Lee, and the townships of Adams, Dayton, Dimmick, Earl, Freedom, La Salle, Meriden, Mendota, Miller, Mission, Northville, Ophir, Ottawa, Rutland, Serena, Troy Grove, Utica, Wallace, and Waltham in LaSalle County.

District 37: The counties of Livingston and McLean, and the townships of Allen, Brookfield, Bruce, Deer Park, Eagle, Eden, Fall River, Farm Ridge, Groveland, Grand Rapids, Hope, Manlius, Osage, Otter Creek, Peru, Richland, South Ottawa, and Vermillion in La Salle County.

District 38: The townships of Aurora, Batavia, Elgin, Geneva and St. Charles in Kane County and the townships of Bristol, Kendall, Lisbon, Naausay, Oswego and Seward in Kendall County.

District 39: The townships of Addison, Bloomingdale, Naperville, Wayne, Winfield and York in Du Page County.

District 40: The townships of Downers Grove, Lisle, and Milton in Du Page County and the townships of Du Page, Lockport, Plainfield and Wheatland in Will County.

District 41: Grundy County and Will County, excepting the townships of Du Page, Lockport, Plainfield and Wheatland in Will County.

District 42: The counties of Cass, Fulton, Knox, Mason, Menard, Warren and the townships of Brimfield, Elmwood, Hollace, Jubilee, Logan, Millbrook, Rosefield, Timber and Trivoli in Peoria County.

District 43: The counties of Henderson, Mercer and Rock Island.

District 44: The counties of Coles, Edgar and Vermilion.

District 45: Stark County and the townships of Akron, Chillicothe, Hallock, Kickapoo, Medina, Limestone, Princeville, Peoria, Peoria City, Radnor and Richwoods in Peoria County.

District 46: The counties of Ford, Iroquois, Kankakee, and the townships of Brown, Compromise, Condit, East Bend, Harwood, Kerr, Ludlow, Newcomb, and Rantoul in Champaign County.

District 47: The counties of De Witt, Douglas, Moultrie, and Piatt, and the townships of Ayers, Champaign, Colfax, Crittenden, Hensley, Mahomet, Ogden, Pesotum, Philo, Raymond, Sadorus, St. Joseph, Scott, Sidney, Somer, South Homer, Stanton, Tolono, and Urbana in Champaign County.

District 48: The counties of Logan, Marshall, Putnam, Tazewell and Woodford.

District 49: The counties of Morgan and Sangamon.

District 50: The counties of Christian, Macon and Shelby.

District 51: The counties of Bond, Clinton, Cumberland, Effingham, Fayette, Jasper, Marion and Montgomery.

District 52: The counties of Calhoun, Jersey and Macoupin, and the townships of Alhambra, Collinsville, Fort Russell, Foster, Hamel, Helvetia, Leef, Marine, Moro, New

Douglas, Olive, Omphghent, Saline, and St. Jacob in Madison County, and the townships of Canteen, Caseyville, Englemann, Freeburg, Lebanon, Mascoutah, O'Fallon and Shiloh Valley in St. Clair County.

District 53: The townships of Alton, Chouteau, Edwardsville, Granite City, Godfrey, Jarvis, Maneoki, Pin Oak, Venice, and Wood River in Madison County.

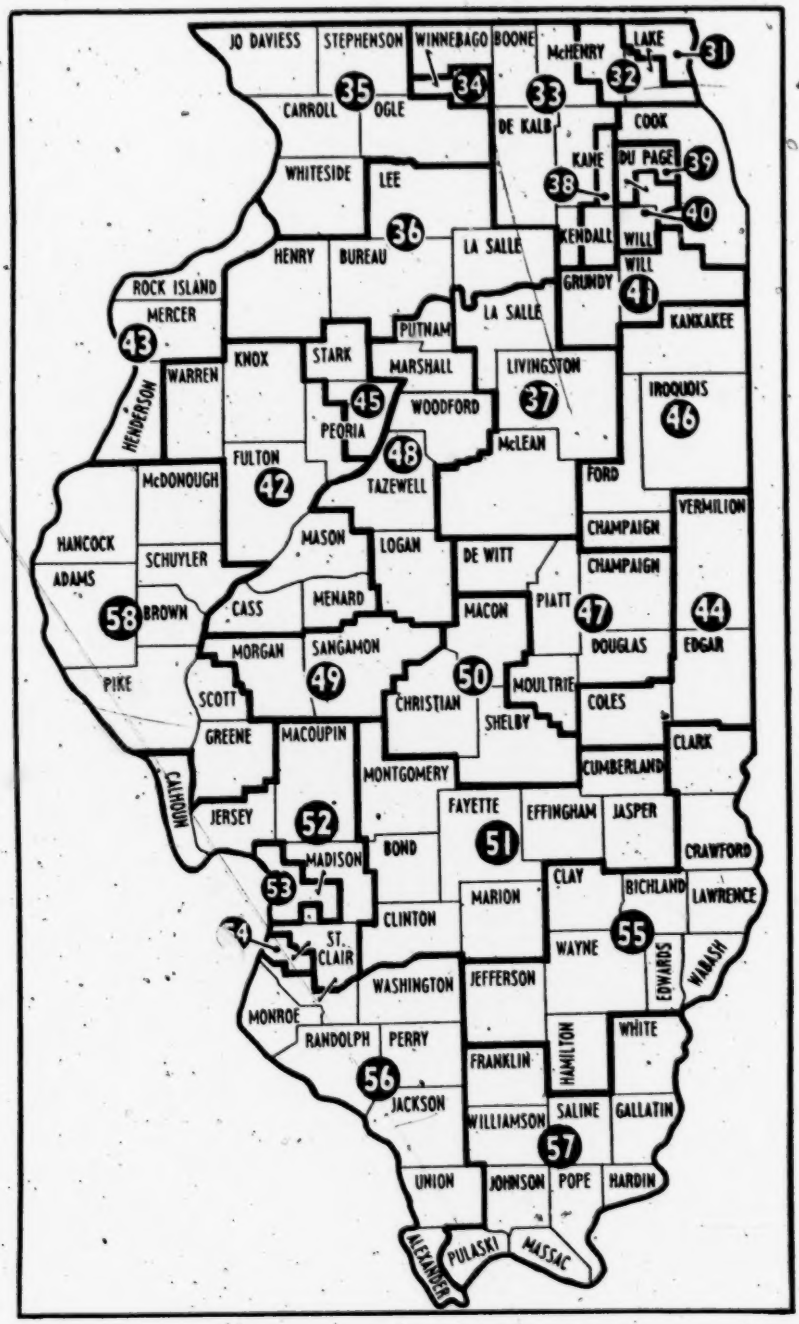
District 54: The townships of Belleville, Centreville, East St. Louis, St. Clair, Stites, and Stookey in St. Clair County.

District 55: The counties of Clark, Clay, Crawford, Edwards, Hamilton, Jefferson, Lawrence, Richland, Wabash and Wayne.

District 56: The counties of Alexander, Jackson, Monroe, Perry, Randolph, Union, and Washington, and the townships of Fayetteville, Lenzburg, Marissa, Millstadt, New Athens, Prairie du Long, Smithton, and Sugar Loaf in St. Clair County.

District 57: The counties of Franklin, Gallatin, Hardin, Johnson, Massac, Pope, Pulaski, Saline, White and Williamson.

District 58: The counties of Adams, Brown, Greene, Hancock, McDonough, Pike, Schuyler, and Scott.



SENATE DISTRICTS OUTSIDE COOK COUNTY

APPENDIX I

ORDER of January 22, 1965

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

No. 63 C 291

JOSEPH GERMANO, et al

Plaintiffs,

v.

OTTO KERNER, as Governor of the State of Illinois and Chairman of the State Electoral Board, et al.,

Defendants.

O R D E R

In obedience to and in implementation of the Remand Order of the Supreme Court herein dated July 20, 1964, it is hereby ordered:

1. That the plaintiff's amend within 10 days their complaint to include as parties defendant, and cause process to be issued and served on all present members of the Illinois General Assembly.

2. That because of the constitutional infirmities contained in certain provisions of §6 Article IV of the Illinois Constitution and Ill. Rev. Stat. Ch. 46 §§158-1 to 158-5, requiring the apportionment of State Senatorial districts on the basis of area, which provisions the Supreme Court has found herein to violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, no election of Illinois State Senators may hereinafter be held pursuant to said constitutional provision and legislation.

3. That any implementation, amendment or substitution of all or part of the said defective portions of the said constitution or legislation be submitted to and approved by this court before the holding of any election pursuant thereto, to determine pursuant to the aforesaid mandate satisfactory compliance with the guidelines set forth in the related and applicable decisions of the United States Supreme Court.

4. That in the event no such implementation, amendment or substitution of the constitutionally defective method of election of Illinois state senators is approved by this court, as above provided, a rule shall issue forthwith directing the parties defendant herein, including those added pursuant to paragraph 1 of this order, to show cause why all Illinois state senatorial seats shall not be filled at and by a general at-large election at the time presently scheduled for the 1966 elections, and every four years thereafter.

5. That this court retains jurisdiction to afford such relief as may be necessary to effectuate this Order.

Enter:

Elmer J. Schnackenberg
Judge, Court of Appeals

William J. Campbell
Judge, District Court

R. B. Austin
Judge, District Court

A True Copy Teste
Elbert A. Wagner, Jr.
Clerk

Dated: January 22, 1965

By *Dorothy Aldridge*
Deputy Clerk

Feb. 9, 1965

APPENDIX J

Order of September 9, 1965

In the

UNITED STATES DISTRICT COURT

For the Northern District of Illinois
Eastern Division

No. 63 C 291

JOSEPH GERMANO, et al.,

Plaintiffs,

v.

OTTO KERNER, as Governor of the State of Illinois and Chairman of the State Electoral Board, et al.,

Defendants.

O R D E R

Before SCHNACKENBERG, Circuit Judge, and CAMPBELL and AUSTIN, District Judges.

By order dated June 8, 1965, this Court established September 10, 1965 (thereafter extended to October 4, 1965), as a reasonable date by which the appropriate agencies of the State of Illinois should validly reapportion the Illinois State Senate, pursuant to the decision of the Supreme Court of the United States announced on June 1, 1965, in this cause, 381 U.S. 407. Thereafter, the 74th Illinois General Assembly adjourned on June 30, 1965, without having reapportioned the Illinois Senate. Then on July 30, 1965, the Supreme Court of Illinois in the cause known as *People ex rel. Engle* v. *Kerner,* No. 38848, ordered the parties to confer with each other in an attempt to reconcile their conflicting views and present an agreed plan for a valid reapportionment of the Illinois Senate.

Subsequently this Court (per Campbell, J.), with the knowledge and approval of the Supreme Court of Illinois, conducted numerous and extensive pretrial conferences in an effort to obtain agreement among the members of the Illinois Electoral Board as to a constitutionally valid reapportionment of the Illinois Senate. Although complete agreement did not result, substantial progress was achieved; on August 25, 1965, the pretrial conferences culminated in the entry in this cause of a Pretrial Memorandum attaching and incorporating a provisional senatorial reapportionment plan (including maps, legal descriptions and population data).

The said reapportionment plan was based upon the areas of agreement reached by the parties; district boundaries were drawn by the Court in the instances where the parties could not agree. The Pretrial Memorandum was concurred in by all the members of this Court, and was transmitted forthwith to the Clerk of the Supreme Court of Illinois.

On September 9, 1965, the Supreme Court of Illinois issued its opinion and decision in *People ex rel. Engle* v. *Kerner, supra,* fully approving and adopting the provisional senatorial reapportionment plan attached to and incorporated in this Court's Pretrial Memorandum .... Ill. 2d ..... The Clerk of the Supreme Court of Illinois has now transmitted that Court's opinion and the accompanying reapportionment plan to the Clerk of this Court and it has been filed in this cause.

Pursuant to the Pretrial Memorandum of August 25, 1965, It Is Hereby Ordered that a rule be and the same is hereby entered upon all parties herein to show cause, if any, and in writing within ten (10) days as to why the senatorial reapportionment plan (attached to the Pretrial

Memorandum of August 25, 1965 and to the Opinion of the Supreme Court of Illinois of September 9, 1965) is not constitutional and to further show cause, if any, as to why this Court should not now enter a final order finding said plan constitutional.

Elmer J. Schnackenberg
Circuit Judge
William J. Campbell
Chief District Judge
Richard B. Austin
District Judge

Enter: Sep. 9, 1965

APPENDIX K

Judgment of October 12, 1965

In The

UNITED STATES DISTRICT COURT

For the Northern District of Illinois

Eastern Division

No. 63 C 291

JOSEPH GERMANO, et al.,

Plaintiffs,

v.

OTTO KERNER, as Governor of the State of Illinois and Chairman of the State Electoral Board, et al.,

Defendants.

JUDGMENT

Before SCHNACKENBERG, Circuit Judge, and CAMPBELL and AUSTIN, District Judges.

Pursuant to the rule entered by this Court on September 29, 1965, the Court has received the written suggestions of the parties hereto and finds that the reapportionment plan for the Illinois Senate embodied in this Court's Pretrial Memorandum of August 25, 1965 (subsequently approved and adopted by the Supreme Court of Illinois on September 9, 1965) is in compliance with the federal constitutional principle of "one man — one vote". (U.S. Const., Amendment XIV; *Reynolds* v. *Sims*, 377 U.S. 533; *Lucas* v. *Forty-Fourth General Assembly of Colorado*, 377 U.S. 713.) The Court accordingly finds that approval of the said reapportionment plan will fully comply with the

Mandate of the Supreme Court of the United States in this cause (381 U.S. 407) and will dispose of this action upon its merits.

Due notice heretofore having been given to all parties and all parties having been heard upon said plan, It Is Hereby Ordered, Adjudged and Decreed that the reapportionment plan for the Illinois State Senate attached to and incorporated in this Court's Pretrial Memorandum of August 25, 1965, as approved and adopted by the Supreme Court of Illinois on September 9, 1965, be and the same is hereby declared to be in accordance with the federal law, and the same is hereby also declared to be the senatorial map for the State of Illinois for the election of Illinois State Senators in 1966 and thereafter, until the Illinois State Senate is redistricted in accordance with law.

Done and ordered this 12th day of October, 1965.

By The Court:
Elmer J. Schnackenberg
Circuit Judge
William J. Campbell
Chief District Judge
R. B. Austin
District Judge

Proof of Service of Jurisdictional Statement and Appendix

We have received a copy of the foregoing Jurisdictional Statement and Appendix this ..... day of February, 1966.

.....

William G. Clark Attorney General
for Otto Kerner et al.

We have received a copy of the foregoing Jurisdictional Statement and Appendix this ..... day of February, 1966.

.....

Don H. Reuben, Lawrence Gunnels
for William J. Scott

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Office-Supreme Court, U.S.
FILED
MAY 23 1966
JOHN F. DAVIS, CLERK

No. 1067

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

The People of the State of Illinois on the relation of ROBERT H. ENGLE,

Appellants,

vs.

OTTO KERNER, et al., Members of the Illinois State Electoral Board,

Appellees.

An Appeal from the Supreme Court of the State of Illinois

Petition for Rehearing

~~BRIEF FOR APPELLANTS~~

ROBERT H. ENGLE, Pro se
5838 South Stony Island Avenue
Chicago, Illinois, 60637
DOrchester 3-4622

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

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An Appeal from the Supreme Court of the State of Illinois

BRIEF FOR APPELLANTS

OPINIONS BELOW

The opinions of the Illinois Supreme Court with federal questions appealed here are given in the Jurisdictional Statement Appendix, B, D, and H. The motions involving

the questions presented, all denied without comment or without prejudice, are quoted in the text where they are germane.

JURISDICTION

This is an appeal from the highest court in Illinois under the provisions of 28 U.S.C. 344, and 28 U.S.A. 1257 (2). The texts of the United States Constitution involved are:

> Article IV-4, The United States shall guarantee to every State in this Union a Republican Form of Government, . . .
>
> Amendment XIV-1, . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws.

The Illinois Supreme Court still has retained jurisdiction in this case and has announced that this is to last until the 1970 census figures are available for legislative action. The latest Court action is the confirming judgment of the Three-Judge United States District Court of Northern Illinois, Eastern Division, dated 12 October 1965.

QUESTIONS PRESENTED

1. Whether the mandatory and unnecessary postponement of decennial reapportionments from the 1st to the 2nd General Assembly after the U.S. Census of Population is, for the 1st and 5th bienna of each reapportionment period, in violation of the Equal Protection Clause of Amendment XIV-1 of the United States Constitution.

2. Whether for Illinois, elections of members of the General Assembly by the State at large abridges Illinois' Republican Form of Government guaranteed by the United States in Article IV-4, and abridges Illinois electors' right as United States citizens to a complete and equal ballot for this essential office, in violation of Amendment XIV-1.

3. Whether in Illinois, with its unique system of District Minority Representation, the Equal Protection Clause of Amendment XIV requires the equality of Legislators, or of Electors.

4. Whether the 9/9/1965 apportionment of Senate Districts should have included the provision for greater mathematical nicety in the equality of the representation of Electors rather than in the voting of the Senators.

STATEMENT OF THE CASE

Note: *Germano* v. *Kerner* challenged the validity of the Illinois 1955 Senate District under the Equal Protection Clause of our United States Constitution. The *People of the State of Illinois ex rel. Engle* v. *Kerner, et al.*, challenged not only the validity of the 1955 Senate Districts under this Equal Protection Clause, but the validity, under the Illinois Constitution, of the entire 1954 proclaimed amendment to Article IV of the Illinois Constitution of which these Senate Districts are a part.

This cause, *The People . . . Engle* v. *Kerner, et al.*, presents for the first time before the bar of this Court, the Illinois plan for equalizing representation. This plan would not only automitacally and almost perfectly equalize representation, but it would vitalize it and obviate political party gerrymandering. It would use the century-old Illinois System of District Minority Representation by which each district sends three Representatives to the General Assembly, but to which is added the provision that each such Representative votes his own election returns when voting on the legislative decisions of the whole House, the decision turning on majorities of the total of the State's electors who voted for the elected Representatives.

The Illinois System of District Minority Representation began with the Constitution of 1870. In the Constitution Convention of 1869-70 Delegate Joseph Medill (editor of the Chicago Tribune) had proposed it for both the Senate and the House of Representatives as a means for breaking a deplored sectionalism that had developed in the 1960's by southern Illinois electing only Democrates and northern Illinois electing only Republicans, and the minorities in both sections feeling un- or mis-represented. The Con-

vention shied away from this novelty for either house but permitted it to be submitted to the electors as an alternative proposal. The People adopted what the convention was too timid to propose and have retained it for almost a century.

It accomplished its original purpose for it has enabled any minority that exceeded 25 per cent of the district's vote to elect a Representative. But in practice it has effectively disfranchised the electors for this office in the November elections. In half or more of the districts only three candidates are nominated so that after the first vote for this office, how or whether subsequent electors vote makes no difference whatever in the result. In the other districts the electors are compelled to accept 3 or 4 nominees which is almost as bad. Equality of representation *as between districts* depends (as it does in other systems), on an impossible equality of district populations. The vexations of decennial re-gerrymanders prevail.

In 1910, Illinois in its Primary Election Law, required political party Committeemen to vote the number of ballots cast by their party in their district in the preceding Primary. In 1964, Illinois required the Delegates in the Party Conventions nominating candidates for Representatives in the General Assembly to be elected by the State at large, to use a vote weighted by the number of their party's votes for Representative in their district in the preceding election.

Since the 1950 Census this Relator has been suggesting the equalization (and vitalization) of representation on the legislative decisions of the whole House, by each Representative voting his own election returns, decisions being, not by majorities of electors elected, but by majorities of the total number of the State's electors who voted for the

elected Representatives. The resulting equality and vitality of electors' votes for this office in place of their present meaninglessness would be, not only desirable, but it is required by the Equal Protection Clause of our United States Constitution.

The 1953 General Assembly waited for "the Governor's plan" which was not drafted until the last few days of the session. By this plan, 58 Senate districts were to be frozen into the Constitution with 24 apportioned to Cook Couty (18 of them in Chicago) while the rest of the State with less than half of the State's population, would have 34 Senate Districts, a majority of 10. Although the new Senate District were not to be changed except by amending the Constitution, they were not to be apportioned until 1955, after the amendment had been adopted. This was an attempt to evade the stating and publishing "in full" requirements of the Amendment Article.*

---

* Article XIV, Section 2 of the Illinois State Constitution since 1870 has this requirement: "2. Amendments to this Constitution may be proposed by either House of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this State for adoption or rejection. . . . Each proposed amendment shall be published in full at least three months preceding the election."

The Governor's Plan proposed 59 Representative districts as nearly as practicable to 1/59 of the State's total population, separately apportioned in (1) Chicago, (2) the rest of Cook County, and (3) by county units in the rest of the State. Apportionments were to be by the second General Assembly after the decennial U.S. Census of Population, or by a Governor's Commission. If this failed there is to be an election of Representatives by the State at large, which in practice can be forced whenever the political power in control of the Governor, or either house of the General Assembly decides to gamble on winning it.

This case originated as a challenge to the validity under the Illinois State Constitution, of the 1954 proclaimed amendment to Article IV for the attempted evasion of the stating and publishing "in full" requirements in the procedures for proposing amendments. The Illinois Supreme Court failed to rule on this issue (see Dissent of Justices Schaefer and Hershey, Judicial Statement, Appendix D, p. 20, App. 22), but 1) accepted the ruling of *Reynolds* v. *Sims*, 327 US 533 as applied to *Germano* v. *Kerner, et al.*, holding the Illinois 1955 permanent Senate Districts in violation of the Equal Protection Clause of Amendment XIV of our United States Constitution; 2) held that the remainder of the 1954 proclaimed amendment was separable and valid; and 3) retained jurisdiction to insure valid elections in 1966 and until the 1970 census figures are available for legislative action (Judicial Statement, p. App. 17, 37).

The People . . . Appellants, then, by motion, challenged the validity under our United States Constitution, of certain of the remaining features of the 1954 proclaimed amendment to the Illinois State Constitution which the Illinois Court had held separable and valid. All these motions the Illinois Supreme Court denied, one without prejudice, all without comment. These, the People . . . Appellants now appeal to the Supreme Court of the United States.

ARGUMENT

Introduction and Summary

This is an appeal from the Illinois Supreme Court's rulings that in at least four instances permit practices that abridge our Republican Form of Government and violate the Equal Protection Clause of our United States Constitution, namely,

1. The 1954 proclaimed change in the Illinois Constitution which mandatorily and unnecessarily delays decennial reapportionments by two years thus making the 1st and 5th biennia, 40 per cent of each decade, to be in violation of the Equal Protection Clause of Amendment XIV.

2. In such a large state as Illinois, the election by the State at large of 177 Representatives from 236 candidates, abridges electors' rights as United States citizens in a Republican Form of Government to a complete and equal ballot.

3. Illinois Electors are denied their right to a meaningful vote for Representatives in the General Assembly by interpretations of Illinois Constitution's provisions that unnecessarily protect the equality of *Representatives* votes rather than the equality of *Electors* votes, in violation of the Republican Form of Government and the Equal Protection Clause of our National Constitution.

4. The Illinois Supreme Court in its 9/9/1965 apportionment of Senate District failed to comply with the Equal Protection Clause, by protecting the equality of Senators' voting with mathematical nicety, and refusing to consider the equality of electors' voting on the grounds that mathematical nicety is not constitutionally required.

The Supreme Court of the United Sta[illegible] adopted a case by case policy in evolving standar[illegible] permissible deviations from the equality required by the Equal Protection Clause (*Reynolds* v. *Sims*, VI). Implicit in all previous cases, is the unstated but assumed premise that all legislators vote equally, which carries the corollary that the votes of the electors represented are weighed by the ratio of the Average to the Actual district populations. In this Cause, The People . . . Appellants hold that in Illinois, with its system of District Minority Representation, the Equal Protection Clause of our United States Constitution requires the equality of *Electors* votes rather than that of *Representatives*, even to the extent of weighing each Representatives votes on legislative decisions by the number of Electors voting for him, *i.e.*, by his own election returns. This ensures automatic and almost complete equality. At present only Illinois can do this. In Illinois the alternative is either this, or effective disfranchisement of Electors for this office in the November elections.

I.

IN THE 1954 PROCLAIMED AMENDMENT TO ARTICLE IV OF THE ILLINOIS CONSTITUTION, THE MANDATORY AND UNNECESSARY TWO-YEAR DELAY IN DECENNIAL REAPPORTIONMENTS VIOLATES THE EQUAL PROTECTION CLAUSE OF OUR UNITED STATES CONSTITUTION FOR THE FIRST AND FIFTH BIENNIA, 40 PER CENT, OF EACH DECADE, AND IS THEREFORE INVALID.

On 22 March 1965, four days after their petition for a rehearing was denied, The People . . . Appellants presented this motion:

MOTION.

Now comes Robert H. Engle, Relator, *pro se,* and respectfully moves that the Supreme Court of Illinois, in its opinion in the above titled cause, Agenda 23, January 1965, filed 4 February, jurisdiction retained, specifically includes as an additional invalid feature of the 1954 proclaimed amendment to Article IV of the Illinois Constitution, the date "1963 and every 10th year thereafter" in Sections 7 and 8. This is a mandatory and unnecessary delay in the decennial reapportionments until the second General Assembly after the "lame duck" apportionments for as long as 14 years after the date of the census on which it is based.

This is clearly invalid by Article II Section 18 of the Illinois Constitution as well as by *Baker* v. *Carr,* 369 US 186, *Reynolds* v. *Sims,* June 1964, and *Germano* v. *Kerner,* June 1964. Instead of thus mandatorily delaying reapportionments, re-equalizations of representation should be made as soon as practicable. For 85 years after 1870 this was the duty of the first General Assembly after the decennial U.S. Census. With the current increasing efficiency in data processing, there are sufficient Census data available for the first General Assembly to make an equitable apportionment.

/S/ *Robert H. Engle,*
17 March 1965

Received three copies of the above Motion this 22 day of March 1965.

/S/ *L. Gunnels*

Received three copies of the above Motion this 22 day of March 1965.

/S/ *William G. Clark,*
Attorney General

From 1870 to 1954 the first General Assembly after the U.S. Census of Population had the duty to re-apportion the State for General Assembly districts. The population data for 1960 "by political boundariees and enumeration districts were available in July 1960". The reports for the 1970 Census, by improved data processing, are expected by the Census Bureau to be as much as three months earlier than they were for 1960. The first General Assembly after the 1970 Census and the Assemblies each 10th year thereafter will be in session 9 to 15 months after the date of the enumeration and certainly will have all the data they need to make the required reapportionment.

Unless the 1971 instead of the 1973 General Assembly, and those of each 10th year thereafter make the apportionments, the first and fifth biennia of each reapportionment period will be in violation of the Equal Protection Clause of our United States Constitution. This mandatory delay is clearly unconstitutional and should be invalidated along with the Senate Districts based on area, of the same 1954 proclaimed amendment invalidated in *Germano* v. *Kerner,* in the *Reynolds* v. *Sims* group of cases.

II.

IN ILLINOIS, ELECTIONS BY THE STATE AT LARGE OF 177 REPRESENTATIVES FROM 236 CANDIDATES, UNCONSTITUTIONALLY DEPRIVES ELECTORS OF A COMPLETE AND EQUAL BALLOT FOR THIS OFFICE.

1. The statistics alone of Illinois' large size: 380 miles long, 200 miles wide, over 56,000 square miles in area, over 10,000,000 in population, half of it in Cook County, the other half in urban and rural patterns covering the rest

of the State, show the appropriateness of electing its legislature *by districts* and the inappropriateness of trying to do so by the State at large, its impracticability, and even impossibility. Experience amply confirms this conclusion.

2. Districts are basic to the design of the Illinois System of District Minority Representation including cumulative voting by electors. These were the first victims of trying to elect representatives by the State at large. Legislators and Judges nullified the plain language of the Illinois Constitution and substituted their own speculations about the people's intention to say something else.* District representation and cumulative voting are essential to the representation of large significant groups of Illinois citizens who formerly elected Representatives. But merged with the State at large, these are hopelessly swamped and unable to elect a voice, thus reducing representativeness.

3. The experience of the 1964 election of Representatives by the State at large shows the improbability of any of the 236 candidates canvassing the entire state, as electors need, expect, and get from candidates for Governor, United States Senator, and any other officer elected by the

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* "In all elections of Representatives aforesaid, such qualified voter may cast as many votes for one candidate as there are Representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates as he shall see fit; and the candidates highest in votes shall be declared elected." (the Illinois Constitution, last sentence in Section 7 of Article IV, 1954 proclaimed amendment and unaltered since 1870).

State at large. No candidates for Representative even claimed to have canvassed the entire State in 1964, including Representatives Stevenson and Eisenhower.

4. Although the Illinois Constitution provides for cumulative voting in the election of State Representatives, the 1964 Special Session of the General Assembly amended the election code to limit the counting of votes to one each, thus requiring the elector to mark for 177 candidates in order to exercise his full voting right for this office. Even if an elector marked the party circle for the entire slate of 118 party candidates, he had to mark for 59 and no more other candidates to use his full voting right for this office. To vote against a single undesired candidate in his party group he had to mark individually for 177 candidates—and no more. Few wanted thus to aid the opposite party to a 2/3 majority and almost none would be able to mark all 59 individual votes in the time permitted for voting. If there were any who actually voted for any combination of 177 candidates, they were not numerous enough to make inappropriate the assertion that experience shows the great difficulty and practicable impossibility of doing so. This abridges the electors' rights as United States citizens in a Republican Form of Government, to a complete and equal ballot and denies them rights protected by Section 1 of Amendment XIV of our United States Constitution.

III.

IN THE ILLINOIS SYSTEM OF DISTRICT MINORITY REPRESENTATION, (THREE REPRESENTATIVES ELECTED FROM EACH DISTRICT BY CUMULATIVE VOTING), EQUALITY OF ELECTORS' REPRESENTATION DEPENDS ON EACH REPRESENTATIVE VOTING HIS OWN ELECTION RETURNS ON THE LEGISLATIVE DECISIONS OF THE WHOLE HOUSE, DECISIONS TURNING ON MAJORITIES OF THE TOTAL NUMBER OF THE STATES' ELECTORS VOTING FOR THE REPRESENTATIVES ELECTED, SO THAT EACH ELECTOR IS COUNTED, AND MAKES AN EQUAL MEASURED DIFFERENCE IN THE VOTES OF THE REPRESENTATIVE FOR WHOM HE CASTS HIS BALLOT.

1. This would comply with the Equal Protection Clause of our United States Constitution and wth Section 11 of Article IV of the Illinois State Constitution which requires each legislative decision to aver that it is enacted by the *People,* in an enacting clause reading: "Be it enacted by the People of the State of Illinos represented in the General Assembly". The representation of every elector, by this proposal, would be equal to that of every other elector in the State, and every legslative decision of the House would be by the required majorities of all "the People of the State of Illinois" as measured by their electors, *i.e.* all the voting people of the State.

2. In contrast to "One elector, one vote", the present practice of One *Legislator,* one vote" results in the effective disfranchisement of the electors for this office in the

November election, in those districts (about half of the total) that nominate only three candidates for Representative. After the first ⅓ vote for each candidate (and a few to counter rare write-ins), how or whether any other elector votes, makes no difference whatever in the result. In the remaining districts, where four candidates are nominated, the electors are compelled to accept 3 out of 4 candidates, which is almost as bad.

3. Under "One Legislator, one vote", regardless of the number electing each one, electors' preferences are disregarded. When each Representative votes his own election returns, electors can increase the voting strength of an approved Representative and reduce that of a rascal. Each elector would have the choice of three Representatives and a way to make his choice effective.

4. Under the "One Legislator, one vote" rule, electors' votes for this office have become so meaningless, that in a recent state bond referendum, which, to pass, had to get a majority of the State total number of votes for Representatives, proponents publicly urged electors to double their vote for the bonds in the districts where only three candidates for Representative had been nominated (over half of the State), by voting for the bonds and not voting for Representatives. Electors in other districts could "vote twice" for the bonds if they were not interested in an election of Representatives where they were compelled to accept 3 of the 4 candidates. Such a meaningless, pseudo "election" is repugnant to a Republican Form of Government, and abridges the right of a United States citizen to a meaningful ballot for this important office.

On the other hand, the "One *Elector*, one vote", replacing the "One *Legislator*, one vote" rule, would change the electors' votes for this office from an empty gesture

to an act of great meaningfulness and vitality. The district communities would have an interest in getting out their maximum vote and in the honesty of these elections in the whole State. In each district all candidates would benefit by a maximum vote, the share of each depending on his own vote-getting ability.

5. Under the present "One Legislator, one vote" rule, each district group of electors is of course necessarily weighted, with mathematical nicety, by the ratios of the Average to the Actual district populations. Thus protecting the equality of Representatives rather than the equality of the represented is a violation of the Equal Protection Clause *in Illinois* where the "One Elector, one vote" rule is so patently practicable.

6. Under the "One Elector, one vote" rule, the Equal Protection Clause would be complied with, automatically and almost perfectly, regardless of the imperfections of apportionments populationwise. Re-equalizations would occur, not just once in 10 years, but at every 2-year election of Representatives.

7. The reapportionment problem is further simplified by the elimination of political party gerrymandering. Each political party's strength would depend on the total State vote for its candidates, not on the location of the district boundaries.

8. The Republican Form of Government and the Equal Protection Clause of our United States Constitution require that, in the Illinois House of Representatives elected by the Illinois Plan of District Minority Representation, legislative decisions of the whole house by "majorities of members elected" be interpreted to mean "majorities of all the States electors who voted for the members elected",

each Representative voting his own election returns. Otherwise, equality of Representatives' votes disfranchises Illinois elector for this office in the November elections, violates the Republican Form of Government and rights protected by Amendment XIV-1 of our United States Constitution, and the essence of Section 11 of Article IV of the Illinois State Constitution.

IV.

THE 9/9/1966 ILLINOIS SUPREME COURT OPINION AND APPORTIONMENT OF SENATE DISTRICTS WERE IN ERROR IN ASSERTING THE REYNOLDS v. SIMS DICTA, "MATHEMATICAL NICETY, IS NOT A CONSTITUTIONAL REQUISITE", AND "MATHEMATICAL EXACTNESS OR PRECISION IS HARDLY A WORKABLE CONSTITUTIONAL REQUIREMENT", PRECLUDE THE ADOPTION OR CONSIDERATION OF THE ILLINOIS SYSTEM OF DISTRICT MINORITY REPRESENTATION APPLIED TO THE ILLINOIS SENATE, INCLUDING EACH SENATOR VOTING HIS OWN ELECTION RETURNS ON THE LEGISLATIVE DECISIONS OF THE WHOLE SENATE, DECISIONS TURNING ON ATTAINING THE REQUIRED MAJORITIES OF THE TOTAL STATE VOTE OF ELECTORS FOR THE SENATORS ELECTED.

1. Apportionments for the elections of Senators in 1966 and 1970, on the basis of populations of 1 April 1960, even with low or zero deviations from equality, form districts that will be unequal in 1966 and 1970, to the extent of the relative changes in populations since 1 April 1960.

A surer way, and the only way so far suggested, of achieving the equality of representation required by the Equal Protection Clause of Amendment XIV for the elec-

tion of Illinois Senators in 1966 and 1970 is to adopt for the Illinois Senate the Illinois System of District Minority Representation as used for the Illinois House of Representatives, and adding the provision that on the legislative decisions of the whole Senate, each Senator votes his own election returns, decisions being by required majorities of all the electors of the State who voted for the elected Senators.

For Illinois, with (1) its century of experience with District Minority Representation, and (2) over a half century of experience with appropriately weighting political party Committeeman by their electors, and (3) the 1964 example of the Delegates in the Representatives Nominating Convention, required by law to use votes weighted by their District's electors in the preceding election of Representatives, this closer approach to the equality required by the Equal Protection Clause is normal, expected, and required.

V.

CONCLUSION AND DESIRED RELIEF.

The People of the State of Illinois by this Relator, Plaintiff-Appellants, respectfully request that the Supreme Court of the United States declare and order that:

1. In the 1954 proclaimed amendment to Article IV of the Illinois Constitution, the mandatory delay of decennial reapportionments from the first to the second General Assembly after the United States Census of population, is a violation of the Equal Protection Clause of our United States Constitution and is therefore invalid.

2. For Illinois, the election of members of the General Assembly by the State at large abridges the rights of United States citizens in a Republican Form of Government to a complete and equal ballot for this important office,

and therefore is an invalid attempt to comply with the Equal Protection Clause. Illinois has used more appropriate ways to secure equality of representation.

3. The Republican Form of Government, and rights of citizens of the United States and of Illinois protected by Amendment XIV of our United States Constitution, require that the Illinois System of District Minority Representation include the interpretation that legislative decisions of the whole House be by the required majorities of the number of electors in the whole State who voted for Representatives elected, on these decisions, each Representative voting his own election returns.

4. The Illinois Supreme Court's 9/9/65 apportionment of Senate Districts is not, for Illinois, a compliance with the Equal Protection Clause for the State Senates to be elected in 1966 and 1970.

The Equal Protection Clause is not a protection of the equality of *Legislators'* votes, but it does require, as close as may be, the equality of their *Electors'* votes, even to the extent of using the Illinois System of District Minority Representation including the weighting of each legislator's vote by his own election returns.

The 9/9/65 provision for an Illinois Senate is remanded to the Illinois Supreme Court for reconsideration in the light of this ruling and the proximity of the 1966 election.

Respectfully submitted,

ROBERT H. ENGLE, *pro se*,
People . . . Appellants v. Kerner,
No. 1067
5838 South Stony Island Avenue
312-363-4622.

PROOF OF SERVICE.

We have received a copy of the foregoing Brief on the Merits this ..... day of May, 1966.

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WILLIAM G. CLARK, *Attorney General*
For Kerner et al.

We have received a copy of the foregoing Brief on the Merits this ..... day of May, 1966.

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DON H. REUBEN, LAWRENCE GUNNELS
For Wm. J. Scott

END